AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2008

THURSDAY, MARCH 1, 2007

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10 a.m., in room SD–192, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Kohl, Reed, Shelby, and Alexander.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

STATEMENT OF THE HONORABLE CARLOS M. GUTIERREZ, SECRETARY

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning, the Subcommittee on Commerce, Justice, Science, and Related Agencies will come to order. This is the first time in 13 years that I assume the chair of this subcommittee, and it's a great honor, and it's a bit of an emotional moment.

In 1994, the power transferred to the other party, and in those 13 years, much has changed. Our economy has certainly changed, the challenges to our country have certainly changed, the jurisdiction and scope of this subcommittee has expanded.

The one thing that will not change, is the enduring spirit of bipartisanship that has always been characteristic of this subcommittee, working as I did at VA/HUD, with Senator Bond, and last year with my esteemed colleague, Senator Shelby. We see ourselves as a partnership, on promoting what is right, and so this sense of cordiality, consultation, and civility will continue to be an enduring principle of this subcommittee.

Just to outline a few of the priorities for this year, this subcommittee will focus on innovation, security, and accountability. When I look at the agencies in our jurisdiction, I see tremendous opportunities to promote innovation that creates jobs in our own country, makes our community more secure, while assuring accountability for the stewardship of the taxpayers.

The funding that this subcommittee puts in the Federal checkbook, must meet the mission and mandate of each agency, and

make a down payment on its priorities. The Commerce, Justice, Science Subcommittee is the innovation subcommittee. If America is going to be more competitive, we need to focus on funding and policies to develop new technologies, that lead to new products and new industries that create new jobs.

It is not the role of this subcommittee to pick winners and losers. We are not an industry-controlled society. But it is to provide the basic and applied research that results in these new products and technology, and our agencies set the policies that will make sure that we have an innovation-friendly government.

Over the next several weeks, we will initially focus on innovation. Then we will go to both Federal Bureau of Investigation (FBI) and law enforcement to focus on security. Underlying in all of the hearings will be questions related to accountability, and our stewardship of taxpayers dollars.

We're looking at the National Science Foundation (NSF) that funds promising research and cultivates the next generation of science and engineers, particularly at the graduate level. The National Institute of Standards and Technology (NIST), that we're going to hear from later today, that funds new technologies, to make us more competitive. And, by the way, they win Nobel Prizes, too.

The science at the National Aeronautics and Space Administration (NASA) and the National Oceanic and Atmospheric Administration (NOAA) help us better understand our planet and provides the scientific building blocks for innovation. Nothing gets kids more interested in science, like exploration and discovery in outer space, and the inner space in the ocean.

We want to make sure, though, this—we have an innovation-friendly government. NIST sets measurements and standards that the private sector can rely on, and the world counts on. The U.S. Patent and Trademark Office protects our intellectual property, and the International Trade Administration (ITA) enforces our trade agreements.

We also will be focusing on security, but that's for another day. This subcommittee will also be looking at accountability in terms of the expenditure of taxpayers dollars, and to make sure that, whether it's waste, or abuse, or poor performance, will not be tolerated. But today, we're going to kick off our innovation hearing with the Secretary of the Commerce Department, a long-advocate for America's role in international trade, promoting competitiveness, and encouraging innovation and technology.

Later on, in the second panel, we'll be hearing from the Director of the National Institute of Standards and Technology and also the Director of the Patent Office.

Today, I will want to know how the budget meets the Department of Commerce mission to foster, serve, and promote the Nation's economy, which is a little bit rockin' and rollin' today, but again, you know, we're a country of institutions, and innovation. I want to know how the budget will promote the mission, and how the Commerce Department will improve accountability.

In the accountability areas, the three flashing lights we have are, the NOAA satellite program, also some issues that—the Patent Of-

fice, that I will raise from there, and also the managing of the 2010 census.

But, today, we're very pleased to have the Secretary of Commerce, we want to hear what he has to say, we've enjoyed such a cordial relationship. He has been the President's link to the business community here, and to the growing international markets. So, we welcome him, and with that statement, I turn to my colleague, ranking member and, essentially, vice chairman, Senator Shelby.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Senator Mikulski.

As Senator Mikulski said, we've worked extremely well together, sharing many of the same goals and the expectations of the agencies that we oversee. We go back to our House days on the Energy and Commerce Committee, seems like yesterday, but it was more than that, I think Senator Mikulski would note.

But I'm—Senator Mikulski, I'm pleased to serve beside you, once again on this subcommittee. I served as chairman, and now I serve as ranking, and you as chairman. Perhaps that'll change someday, but until it does change, we'll be working together either way.

Today, I also welcome the Secretary of Commerce before the subcommittee as well as Dr. Jeffrey and Mr. Dudas. I look forward to learning more about how the 2008 budget request will improve the Department of Commerce, many important activities. The Nation, Mr. Secretary, relies heavily on the Department of Commerce that you head up, to maintain America's competitiveness within today's foreign marketplace, and to promote and to expand our international trade agreements.

Through the programs of the Department of Commerce, the country is able to maintain high technical standards, as well as staying on the cutting edge of scientific research, all of which are fundamental, Mr. Secretary, to our Nation's leadership in the global market. You know this well.

Overall, the Department of Commerce's budget request for 2008 is $6.5 billion. This is an increase of $90.4 million from the funding level provided in the joint resolution for fiscal year 2007.

Mr. Secretary, at this time, I want to also compliment you on how well your Department, through NOAA, continue to perform along the gulf coast in the wake of the devastating 2005 hurricane season. Last year, the committee appropriated $150 million in emergency supplemental funding through the Department to aid recovery efforts, which you needed. A portion of these funds went toward locating—and removing—marine debris deposited by the hurricanes. Fishing snags, and navigational hazards that halted maritime commerce, and pose a threat to the fishing industry of being removed.

I've seen the images of salvage wreckage, which include fuel storage tanks, large trees, and even sunken barges. NOAA, with the help of partner agencies, is quickly and efficiently clearing obstructed shipping channels and fishing grounds, making the area safer, which is vital to the economies of Mississippi, Louisiana, and of course, my State of Alabama.

I share Senator Mikulski's expectations for the Department of Commerce, particularly her emphasis on accountability. We have to be accountable. We will continue to monitor how the Department strengthens, and improves computer security to protect sensitive agency information, and we will continue our scrutiny on cost overruns and schedule delays which negatively impact NOAA's satellite program.

The Department's request includes $1.2 billion for the Census Bureau, which—with nearly one-half of these funds directed toward the anticipation of the 2000 census—all comes under your jurisdiction.

The decennial census, and the comprehensive collection of other surveys makes the Census Bureau a provider of fundamental data to Federal, State, and local governments, financial markets, and the public. These data sets are collected from a wide variety of sources, including businesses and citizens. Public trust, Mr. Secretary, in the security and confidentiality of this information is absolutely critical to the accuracy and the validity of the vital statistics published by your agency.

There have been recent problems with the Department of Commerce and other Government agencies, of not having adequate security measures in place to protect personal data. Less than 3 weeks ago, in my home State, Birmingham, Alabama, the Alabama—the Veterans Administration's employee laptop was stolen, it's all been in the news. It contained hundreds of thousands of records of personal information belonging to veterans. This is not under your jurisdiction, I know, but this is an incident, and that's unacceptable.

I cannot emphasize how critical it is that the data be secure. The Census relies upon information from people divulging this data, and public trust in the security and confidentiality of the information being provided is absolutely crucial to the accuracy and validity of the vital statistics published by your agencies.

The Department must never lose sight of the duty to protect the information it collects. I'm pleased to see the American Competitiveness Initiative, or ACI, has continued to receive support from the administration, through the National Institute of Standards and Technology budget request. ACI will keep the competitive edge that our Nation expects in the world economy through research and innovation, by focusing on the ingenuity of our people, and tying our capabilities to policies that will keep us at the forefront of scientific and technical advancement for generations to come.

The collaboration of NIST and industry and academia is an excellent example of how this country can take advantage of these resources, and remain competitive in an increasingly challenging world. I believe that such collaboration can be seen in my home State of Alabama. NIST working with the University of Alabama at Birmingham is in early developmental stages for standards in research related to medical devices, for example. Such collaborations combine the expertise of our world-class research universities, with the needs of our Nation, and the end result is innovation and creative problem solving.

I look forward to Dr. Jeffrey's testimony on how the work in NIST will continue to ensure the Nation's competitive edge.

Mr. Secretary, I will also be interested in your comments about the rationale to exclude NOAA from ACI, something that I believe is a mistake. It seems logical to me that NOAA's vast research capabilities be utilized in these efforts. The strength of America's economy rests on our ability to innovate and to use the latest in technology, to solve the problems of today and preserve our economic and scientific leadership in the future.

Certainly the activities of both NIST and NOAA will work to keep the Nation competitive, and inspire the next generation of scientists and researchers. I hope to learn more today, from Mr. Dudas, about how the U.S. Patent and Trademark Office intends to further protect American businesses in 2008 from theft and piracy.

Intellectual property rights and its associated enforcement, continue to have an important impact on international trade, and the U.S. economy. Intellectual property-based industries in this country are one of the largest exporters in the global economy, as you know.

Protecting the value of these rights is critical if we, as a Nation, are to continue being a world leader in innovation. Piracy of those rights costs the American economy and the American workers tens of billions of dollars each year.

Mr. Secretary, we look forward to your testimony, and we appreciate your appearance here today.

Senator MIKULSKI. Thank you very much, Senator Shelby.

Just in terms of the rules of the subcommittee, we're going to recognize people in their order of arrival. And, if they have opening statements, we will put them in the record, or we ask that they incorporate them in their early questions, so we can move to the Secretary, and move to your questions.

Mr. Secretary, would you proceed, and then we'll go to questions?

Mr. GUTIERREZ. Thank you.

Madam Chairman, and Senator Shelby and members of the subcommittee, I'm pleased to present President Bush's fiscal 2008 $6.55 billion budget request for the Commerce Department. With your permission, I'd like to briefly discuss some key elements of our budget and programs, and submit my written testimony for the record.

We believe this is a very disciplined budget. It is focused on the best use of taxpayer resources to advance America's economic and innovative leadership in an increasingly competitive world. So, we've had to make some choices regarding where we allocate the increases, and where we focus our time.

Among the highlights of the increases are, $338 million for the Census Bureau to ramp up for 2010, and reevaluate data collection programs; $69 million for the National Institute of Standards and Technology to implement the second year of the President's American competitiveness initiative, and $123 million for NOAA administration—for NOAA to fund high-priority oceans projects.

Every agency in the Commerce Department is charged with the same critical mission—to promote American innovation and competitiveness, to create economic opportunities, and to improve the lives of the American people.

I'd like to do something a little different this time, Madam Chairman, and that is to illustrate how Commerce agencies are fulfilling the mandate by developing, protecting, promoting, and strategically using innovative technologies, such as the global position system (GPS). I brought some examples here to show how new technology can be transferred to different bureaus within the agency, and I think it's also representative of how one technology for one given industry can be used in many industries around the country.

As you know, the global positioning system technology is now so advanced, the device is as small as this cell phone. I actually have a GPS incorporated into the cell phone. GPS has multiple applications—the technology is used by governments, businesses, and individuals.

The world's first atomic clock, which is the key innovation that enables GPS to work, was invented by scientists at the National Institute of Standards and Technology. This digital clock here, which is always exactly on time, contains technology that synchronizes with the NIST atomic clock. Its timing is extremely accurate, and it can adjust automatically for changes in daylight savings time.

NIST is now pioneering new approaches to atomic timekeeping, such as the chip-scale atomic clock. We expect that chip-scale atomic clocks will soon be used in GPS receivers, cell phones, and other portable electronic devices, to greatly improve performance.

Last year alone, the U.S. Patent and Trademark Office issued over 800 GPS-related patents. The Census Bureau is adopting GPS technology to collect street coordinates, and create a more accurate database for field personnel. It will be incorporating GPS-equipped handheld computers like this one into data collection operations during the 2010 census, to improve productivity, and reduce errors. Just as a matter of illustrating how advanced this is, in my previous role, our sales force had laptop computers, but they were very heavy, and very cumbersome. I find it today, it's actually quite light and very easy to hold up, so we continue to make great advances in this technology.

Senator MIKULSKI. Excuse me, Mr. Secretary, that's what the census takers are going to have?

Mr. GUTIERREZ. Yes.

Senator MIKULSKI. So everything will—go ahead.

Mr. GUTIERREZ. That's right. Whatever doesn't get sent through the mail, will be followed up using this handheld device. To get into it, they actually use their thumb, that protects the device from anyone else wanting to use it.

Senator MIKULSKI. Could you, tell us then, what are the security measures? Because, we're not America's snoop, we're America's census takers.

Mr. GUTIERREZ. Right.

Senator MIKULSKI. How would it protect personal information?

Mr. GUTIERREZ. Yes. This essentially will have a password and probably the most accurate device, which is a thumbprint for the specific enumerator.

And if you'd like, I'll pass this onto you so you can take a look, why don't you just go ahead and give it to them. Thank you.

Additionally, NOAA has created a network of GPS-tracking stations that makes available to the public minute measurements that are used to establish real estate boundaries, position bridges and roads, and do other geo-spatial work.

The International Trade Administration (ITA) is working to remove trade barriers to increase export sales of innovative U.S. GPS technology, with NOAA and the National Telecommunications and Information Administration (NTIA). ITA is also taking the lead to ensure a level playing field for U.S. GPS manufacturers, as Europe enters the satellite navigation market.

The Bureau of Industry and Security continues to monitor and control dual-use GPS technology, and export sales, to protect our national security while ensuring that America's GPS industry has access to open markets.

Measuring the impact of our economy, of innovative R&D, and technologies like GPS to reflect new, 21st century realities, is now the subject of research by our Economics and Statistics Administration (ESA), in coordination with the private sector. This is an example of how we're thinking about technology, and an example of what we believe is success, to develop one technology that can be transferred quickly across many industries, so we can get the benefit across our economy.

Madam Chairman, I use this GPS example to tell the story of the Commerce Department commitment to providing America's industries and workers with the services and tools needed to continue to make this the most competitive country in the world.

The President's fiscal 2008 budget request for the Department is reflective of this commitment and more importantly, this commitment is behind where we have made decisions to allocate budget funds. It is carefully targeted to programs necessary to maintain our competitive edge in this very intense economy.

PREPARED STATEMENT

I look forward to working with you to achieve this important goal, I thank you for giving me this opportunity to discuss the President's budget, and the role of the Commerce Department in advancing our Nation's economic strength. I feel very privileged to be able to represent the Department and the President at this very critical time in our history, and I'd be pleased to hear your comments and take any questions, thank you.

[The statement follows:]

PREPARED STATEMENT OF HON. CARLOS M. GUTIERREZ

Madam Chairman and members of the subcommittee, I am pleased to appear before you today to present the President's budget request for the Department of Commerce. Our request of $6.55 billion in discretionary funds reflects a balance between the administration's commitment to promote and sustain economic growth, and the need to restrain discretionary Federal spending. Enactment of this budget will enable the Department to continue to support the innovative and entrepreneurial spirit of America and increase our competitiveness in the international marketplace.

The President's fiscal year 2008 budget request of $3.82 billion for the National Oceanic and Atmospheric Administration (NOAA) reflects the administration's commitment to environmental stewardship. NOAA encompasses the National Weather Service, which provides critical observations, forecasts and warnings; the National Environmental Satellite, Data and Information Service, which provides timely global environmental satellite data; the National Marine Fisheries Service, which provides stewardship of the Nation's living marine resources and their habitat; the Na-

tional Ocean Service, which measures and predicts coastal and ocean phenomena; the Office of Oceanic and Atmospheric Research, which provides research for understanding weather, climate, and ocean and coastal resources; and the Office of Marine and Aviation Operations, which operates a variety of aircraft and ships providing specialized support for NOAA's environmental and scientific missions.

This budget request includes increases of $123 million for projects that will advance ocean science and research, protect and restore sensitive marine and coastal areas and ensure sustainable use of ocean resources. These initiatives will further the administration's commitment to make our oceans, coasts and Great Lakes cleaner, healthier and more productive, as reflected in the U.S. Ocean Action Plan and creation of a Cabinet-level Committee on Ocean Policy.

The increases for ocean science and research include $20 million to implement the Ocean Research Priorities Plan, $16 million to support the Integrated Ocean Observing System, and $8 million to define the outer limits of the U.S. extended continental shelf.

The increases to protect and restore coastal and marine areas include $8 million for management of the newly-designated Northwestern Hawaiian Islands Marine National Monument, $10 million for restoration of nearly 1,000 miles of habitat for the endangered Atlantic salmon in the Penobscot River watershed, $15 million for the Coastal and Estuarine Land Conservation Program, and $5 million for the implementation of coastal resource priorities identified by the Gulf Coast States.

The increases for ensuring sustainable use of ocean resources include $20 million to improve fishery management, including $6.5 million to implement the newly-reauthorized Magnuson-Stevens Act. An additional $3 million will support development of offshore aquaculture, for which the administration has proposed legislation to establish clear regulatory authority and permitting processes.

The President's fiscal year 2008 budget also continues support for development and acquisition of geostationary and polar-orbiting weather satellites, for climate research programs, and for high priority weather forecasting endeavors including improvements to hurricane modeling and tsunami warning systems.

The Economics and Statistics Administration (ESA) promotes the understanding of the U.S. economy and its competitive position. Under ESA's umbrella, the Bureau of Economic Analysis (BEA) provides key objective data, including the Gross Domestic Product, on the Nation's economic condition in a timely and cost-effective manner. The President's fiscal year 2008 budget requests $85 million for ESA Headquarters and BEA to provide statistics that are critical to public and private sector decision-making. This request includes an increase of $2 million to measure the impact of research and development along with other knowledge-based activities on economic growth.

ESA's Census Bureau is the leading source of quality data regarding the Nation's population and economy, and the President's fiscal year 2008 budget requests $1.23 billion in discretionary funds for the Census Bureau. This includes a program increase of $325 million for Periodic Censuses and Programs. Of this increase, the largest component is $281 million to continue reengineering the 2010 Decennial Census to reduce operational risk, to improve accuracy and relevance of data, and to contain total costs and provide for the 2008 Census Dress Rehearsal. Another program addition includes $43 million to support collecting and processing data from the 2007 Economic Census. Also included is an $8.1 million initiative to provide quarterly and annual coverage of all 12 service sectors, matching the coverage of the quinquennial Economic Census. This will greatly improve understanding and tracking of economic developments in the service sector, which currently accounts for 55 percent of Gross Domestic Product.

The International Trade Administration (ITA) supports U.S. commercial interests at home and abroad by strengthening the competitiveness of American industries and workers, promoting international trade, opening foreign markets to U.S. businesses, and ensuring compliance with domestic and international trade laws and agreements. The President's fiscal year 2008 budget requests $412 million for ITA to serve its goals, including an increase of $1.3 million for monitoring and enforcement of compliance with Free Trade Agreements, concluding the Doha Round of World Trade Organization (WTO) negotiations and reducing market access barriers through relevant WTO committees.

The Economic Development Administration (EDA) supports America's regions in their growth and success in the worldwide economy. The President's fiscal year 2008 budget requests $203 million for EDA to carry out its mission effectively.

The Bureau of Industry and Security (BIS) regulates the export of sensitive goods and technologies to protect the security of the United States. The President's fiscal year 2008 budget requests $79 million to enable BIS to effectively carry out this mission. This request reflects greater efficiencies from the consolidation of adminis-

trative services and increased use of information technology in handling export applications, resulting in savings of $1.5 million from the President's fiscal year 2007 request adjusted for inflation.

The Minority Business Development Agency (MBDA) focuses on accelerating the competitiveness and growth of minority-owned businesses by assisting with economic opportunities and capital access. The President's fiscal year 2008 budget requests $29 million to support MBDA's programs and expand the availability of services to minority business enterprises.

The President's fiscal year 2008 budget request of $641 million for the National Institute of Standards and Technology (NIST), a part of the Technology Administration (TA), will advance measurement science, standards, and technology. NIST's activities provide key support for the administration's American Competitiveness Initiative. This budget request includes a $69 million increase for NIST laboratories, National Research Facilities, and Construction and Major Renovations. Of these funds, $47 million are proposed to support critical improvements to NIST's research laboratories in Boulder, Colorado and the NIST Center for Neutron Research in Gaithersburg, Maryland, while $22 million are proposed to support research programs in nanotechnology, quantum information science, climate change measurements and standards, disaster-resilience of structures and earthquake hazard reduction.

The Under Secretary for Technology (TA/US) currently provides policy guidance to the Secretary of Commerce and the Technology Administration's component agencies (NIST and NTIS). Technology plays a critical role across every sector of the economy, and the promotion of technology in advancing America's competitiveness has become an integrated part of the mission across the bureaus of the Department. In keeping with this evolution, the President's fiscal year 2008 budget proposes to modernize the Department's approach to technology policy by elevating those activities to the secretarial level. This modernization includes the appointment of a senior advisor in the Department's Office of Policy and Strategic Planning who will chair a Department-wide Technology Council to coordinate technology policy activities across the Department in lieu of a stand-alone Technology Administration. The request of $1.6 million provides resources for the orderly transition of TA/US to the new coordinated structure.

The National Technical Information Service (NTIS) collects and preserves scientific, technical, engineering and other business-related information from Federal and international sources and disseminates it to the American business and industrial research community. NTIS operates a revolving fund for the payment of all expenses incurred and does not receive appropriated funds.

For the National Telecommunications and Information Administration (NTIA), the President's fiscal year 2008 budget request includes $19 million in discretionary budget authority. During fiscal year 2008, NTIA estimates obligating $534 million from the Digital Television Transition and Public Safety Fund to support several programs created by the Deficit Reduction Act of 2005, most notably $426 million for the Digital-to-Analog Television Converter Box Program. Following enactment of the Call Home Act of 2006, up to $1 billion will be awarded in fiscal year 2007 to qualified applicants in the Public Safety Interoperable Communications Grant program, though outlays will continue over several fiscal years.

Furthering the mission to promote the research, development, and application of new technologies by protecting inventors' rights to their intellectual property through the issuance of patents, the President's fiscal year 2008 budget requests $1.9 billion in spending authority for the U.S. Patent and Trademark Office (USPTO). The USPTO will use these funds to reduce application processing time and increase the quality of its products and services. This includes $36 million to hire new examiners to improve processing times and increase the quality of its services. Consistent with prior years, the administration proposes to fund the USPTO budget exclusively through offsetting fee collections. Fee collections for fiscal year 2008 are projected to cover the proposed increases.

The USPTO, the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), and ITA participate in the Strategy Targeting Organized Piracy (STOP!) initiative's goal of ending trade in counterfeit goods. This initiative places additional intellectual property experts in high priority markets, trains foreign government officials in intellectual property protection, and educates foreign publics about the importance of intellectual property. STOP! also provides resources for harmonizing patent laws, and for supporting the negotiation of intellectual property sections of free trade agreements.

Today, I would like to show how diverse components of the Department contribute to innovation and competitiveness. Many people see the Department of Commerce as a conglomerate with diverse and distinct missions. While the Department's bu-

reaus encompass broad, but distinct, areas of the American economy, their core mission is U.S. competitiveness.

Innovation is essential to competing globally and enhancing our quality of life. This is increasingly important as political and technological changes open access to the global economy—creating both new markets and increased competition. The Department of Commerce is well positioned to help America address this challenge.

There are many areas across the Department where we are working on different aspects of competitiveness. Technological innovation is one of this Nation's most significant competitive advantages. The Department promotes and protects technological innovation through the efforts of its bureaus. A prime example is Global Positioning System (GPS) technology. Highly accurate timekeeping is a crucial element of GPS. The Department's National Institute of Standards and Technology (NIST) invented the core GPS timekeeping technology—the world's first atomic clock—in 1949 and continues to make significant improvements in its accuracy.

GPS is made up of more than two dozen satellites in medium Earth orbit, which transmit signals that allow GPS receivers to determine location, speed and direction. Since the launch of the first experimental satellite in 1978, GPS has become a vital tool to governments, businesses, and private citizens worldwide. Its navigation capabilities are indispensable not only to the airline and shipping industries, but also to many Americans who now have personal GPS devices that they use in their cars, on bikes, and while camping and hiking.

As the timekeeping technology improves, so do the navigation capabilities of GPS, expanding its uses into more areas. Currently, NIST operates the world's best standard atomic clock, NIST–F1, with an accuracy equivalent to about one second in 70 million years. NIST scientists are developing new atomic clocks that will soon be accurate to one second in many billions of years. NIST also is pioneering new approaches to atomic timekeeping such as the chip-scale atomic clock, which could dramatically improve GPS receiver performance and impact many other technologies.

In addition to developing technologies underlying GPS, the Department, through the United States Patent and Trade Office (USPTO), protects individual and corporate inventors of GPS technology. In exchange for this protection, inventors are required to share information about their inventions, allowing others to build upon them and create further innovations. Taking GPS as an example of how well the patent system encourages innovation, the USPTO issued over 800 GPS-related patents in 2006 alone.

The Department, through the USPTO, also helps protect both GPS manufacturers and the public by registering trademarks. Manufacturers rely on trademark protection received from registering their trademarks with the USPTO to prevent others from marketing products under their good names. The public relies on trademarks as an assurance of the quality and source of the products they purchase.

The Department understands that GPS and other technological innovations are critical to making the U.S. more globally competitive. As such, the International Trade Administration (ITA) works closely with the United States Trade Representative to develop Free Trade Agreements (FTA) that will eliminate duties on GPS receivers and transmitters in all FTA countries. This will expand opportunities for U.S. businesses, allowing them to export these GPS technologies to FTA countries duty-free. ITA, along with NOAA and NTIA, is also taking the lead in trade discussions with Europe to maintain a level playing field as Europe's upcoming Galileo system enters the satellite navigation market.

Additionally, ITA's U.S. Commercial Service assisted iSECUREtrac Corp, based in Omaha, Nebraska, with a contract for the sale and installation of the first ever state-of-the-art Canadian-based GPS host monitoring system capable of serving the mission critical offender monitoring requirements of every Canadian Province.

As trade barriers are reduced and technology transfer becomes more seamless across the globe, GPS technology is increasingly disseminated worldwide for both civilian and military use. The Department's Bureau of Industry and Security (BIS) oversees and implements regulations that clearly distinguish between military and civilian GPS user equipment to foster economic growth in the U.S. GPS manufacturing industry while protecting U.S. national security. These regulations define, identify, and distinguish military receivers, encryption devices, and GPS components with missile or certain defined airborne applications from their civilian counterparts. These controls have helped accelerate U.S. industry's exports to foreign GPS markets and have enabled the U.S. GPS manufacturing industry to retain a large share of those markets.

Prior to September 1991, most GPS user equipment shipped abroad required individual validated licenses to ensure compliance with U.S. export control regulations. Under current regulations, civilian GPS receivers, other satellite equipment, and as-

sociated telecommunication equipment are allowed to be shipped, with certain restrictions, to most destinations without a license. However, BIS has implemented stringent regulatory controls to prevent transfer of GPS equipment to terrorist-supporting countries, as well as to those end users known to be involved in proliferation activities. These export license applications are closely scrutinized and vetted in an interagency review process coordinated by BIS.

Beyond making GPS work better, helping facilitate the success of U.S. businesses in the global marketplace, and ensuring that the global spread of GPS technology will not endanger our national security, the Department utilizes advances in technology to significantly improve how we conduct business—making our processes more efficient. For example, the Census Bureau launched a reengineering effort in preparation for the 2010 Decennial Census that centered on using technology to improve processes and keep down overall lifecycle costs. GPS technology is critical to the success of this effort. The first step involves collecting the GPS coordinates of streets, county by county, across the Nation. This multi-year effort will be completed in 2008, giving the Census Bureau an accurate database for the country. This database, the Topologically Integrated Geographic Encoding and Referencing system (TIGER), will then allow personnel operating in the field to know their relative position—a critical aspect of finding the right housing unit.

GPS-equipped handheld computers (HHCs) will be used for data collection in several major field operations during the 2010 Decennial Census. During the address canvassing operation, the HHCs will be used to record GPS coordinates for every structure, including newly identified addresses. Later, using GPS, the HHCs will enable staff to conduct data collection for the non-response follow-up operation, allow for the removal of late mail returns, and record daily payroll for all census enumerators. The use of GPS technology will result in improved productivity and reduced errors.

The Economics and Statistics Administration is building measures of innovation in the economy generated by such technological advancements as the GPS-equipped HHCs. Similarly, the Bureau of Economic Analysis is refining its ability to measure the impact of research and development on the economy.

In addition, NOAA uses GPS to navigate its fleet of ships; enforce fishery boundaries in open waters to prevent overfishing; survey the Nation's coastlines, waterways, and airport approaches; and make improved weather forecasts. NOAA also provides a public service to the Nation known as the National Continuously Operating Reference Station (CORS) network. The CORS network consists of over a thousand GPS tracking stations that enable users to refine GPS measurements down to the centimeter level, which is particularly important for measuring real estate boundaries, positioning bridges and roads, and doing other geospatial work.

CONCLUSION

The Department of Commerce's development, promotion, and advancement of GPS technology demonstrates how the Department successfully encourages innovation to create economic growth without sacrificing our national safety. It also illustrates that Commerce is a diverse group of agencies, with varied expertise and differing needs, all engaged in a common commitment to keep the United States at the global forefront of competitiveness and innovation. This is the way we at the Department do business every day—working together, across disciplines, making real, positive, and sustained impacts on the American economy.

The President's fiscal year 2008 budget effectively meets those needs, while exercising the fiscal restraint necessary to sustain our economic prosperity. I look forward to working with the committee to keep our Nation's economy growing and strong, and to promote and preserve the American people's entrepreneurial spirit.

Senator MIKULSKI. Well, thank you very much, Mr. Secretary for that informative conversation and also bringing us in the real-world capability. And, of course, it would involve the Patent Office as well, because while people invent it, we gotta protect it, so others don't steal it.

But, let me get right to the heart of my questions. As we look at the President's budget request of $6.5 billion, about one-half is in NOAA, and about one-third is in the Patent Office, the Patent Office about $1.9 billion—we'll round it off and say $2 billion—and there were other related agencies.

PROMOTING INNOVATION

Let's go to your promotion of innovation, you meaning Commerce, and not you personally. How do you see, given that you have the major agencies of NIST, NOAA, the Patents and some other related agencies—where is it in your operation that says, we've got to promote innovation, and I'm going to stand sentry over it to make sure we're coming up with the kind of research ideas, and then as industry does what it does—which is invent—we protect them. Do you have a one-stop shop? How does this work?

Mr. GUTIERREZ. Stepping back, the way we're thinking about it, is our whole economy is really a partnership between the private sector, the public sector, and academia. The private sector does about two-thirds of all the research and development (R&D) spending in the country, and that R&D in the private sector is very focused on the development side.

The Government does about one-third, and of that one-third, its primary focus is on the "R," the research side. We tend to do projects that are very long term in nature, that the private sector sometimes does not have the time or the resources, or the competitive environment to be able to take the time to look out 10 or 15 years.

As we work on our technologies, we have to ensure that there's a customer on the other end. And that customer, of course, is the private sector. Dr. Jeffrey, I hope, will be talking about members of the private sector that work inside of NIST. And every time we open up a project in NIST, it starts out with members of the private sector who are interested in the developments of that project.

As part of our overall system, we have to have a patent and trademark operation that responds to increasing demands of businesses, and increasing demands to be responsive to issue patents, and to issue trademarks and copyrights. In essence, we participate in the creation of the innovation, we coordinate very closely with the private sector, and then we enable that innovation by having an efficient Patent and Trademark Office. I would say innovation is embedded in every one of our bureaus.

Senator MIKULSKI. But you have a coordinating council?

Mr. GUTIERREZ. Yes, we do.

Senator MIKULSKI. That you chair?

Mr. GUTIERREZ. This is a new Technology Policy Council, as well as an Innovation Metrics Advisory Council, which we've just started.

Senator MIKULSKI. Yeah, I've read about it in Technology News, I actually read these things. It's great.

Mr. GUTIERREZ. We just had our first meeting, too.

PATENT AND TRADEMARK OFFICE REMEDIATION PLAN

Senator MIKULSKI. Well, in—first of all, I think, I know Senator Shelby wants to talk about NOAA and why it wasn't in the President's competitive agenda, but I'm going to take up the issue of intellectual property, and then come back to NOAA and its satellites.

When I read the inspector general's report of the commerce, it talked about the major challenges of the Department, and it said it was making improvement. But one of the things that it raises

is the fact that we have to ensure that the Patent Office uses its authorities and flexibilities to achieve better results—and I would say money, too, because that goes with it.

In the last 5 years, under Senator Gregg, Senator Hollings, and Senator Shelby, and now me—we've increased Patent Office by 50 percent. And you're close to $2 billion. Yet, there continues to be reports about the management issues, and I know we'll hear about it more in the testimony—the lack of effective strategies to communicate and collaborate with examiners, of course, the production quotas, which is the tremendous backlog, and the lack of ongoing technical training for examiners. I won't go through every item, but I commend to you the GAO report, and also the major challenges.

Now, we want to hear from Mr. Dudas about this. I would like to have a remediation plan. And I'd like to have it from Mr. Dudas, as the Chief Executive in the agency, but I would also ask that you personally review that remediation plan, and get back to us in about 45 days. So, that when we do this year's appropriation, it is about money, it is about management, it is about leadership, and it's about protecting our ideas.

So, if we could have a specific remediation plan that goes along with this, I think we would go a long way.

Mr. GUTIERREZ. Yes, Madam Chairwoman, we will do that, and we will have a plan ready for your review. I think that's an excellent idea.

[The information follows:]

USPTO REPORT "THE PATH TO THE FUTURE, THE NEXT STEPS"

April 2007

EXECUTIVE SUMMARY

Fiscal year 2006 was a record-breaking year for the USPTO. Our 8,500 employees had the highest production, highest hiring, highest usage of electronic filing and electronic processing, highest number of examiners working from home and lowest error rate in history. While this is a source of pride, we all recognize that even more can and must be done. Below is a list of initiatives that are either in place, being piloted for implementation, or are planned for implementation as permanent improvements.

MEASURES IN PLACE

Pendency/Productivity

The USPTO has built a performance-based culture.

Hiring 1,200 new patent examiners per year (fiscal year 2006–2012).

Improved Training for new patent examiners in a university-style environment.

Accelerated Examination—a guaranteed complete patent examination in 12 months.

Increased overtime authorization levels and a home office laptop program to increase morale and encourage productivity.

Electronic Processing from start to finish.

Work Sharing with foreign patent offices to decrease U.S. examiners' workload.

Flat Goal pilot program to allow examiners more flexibility and an opportunity to earn increased bonuses for increased productivity.

Early Interviews between applicants and examiners—speeds the process by focusing issues and minimizing misunderstandings.

Human Resources

Aggressive and Expanded Recruitment efforts targeting able candidates likely to succeed in an individualized, production-oriented environment.

Higher Pay: Special pay rate for examiners; bonuses for higher production and quality; recruitment bonuses; and retention bonuses.

Teleworking: The USPTO has the gold standard for federal teleworking. More than a thousand patent and trademark examiners are working from home with hundreds more added each year.

Increased and better communication with employees through management training, employee training and communication initiatives.

MEASURES PROPOSED

Applicant Quality Submissions aid and hasten examiner reviews.

Public Review of published applications.

Public Quality Submissions allow the public to comment on pending applications with more prior art, which results in quicker, higher quality examiner reviews.

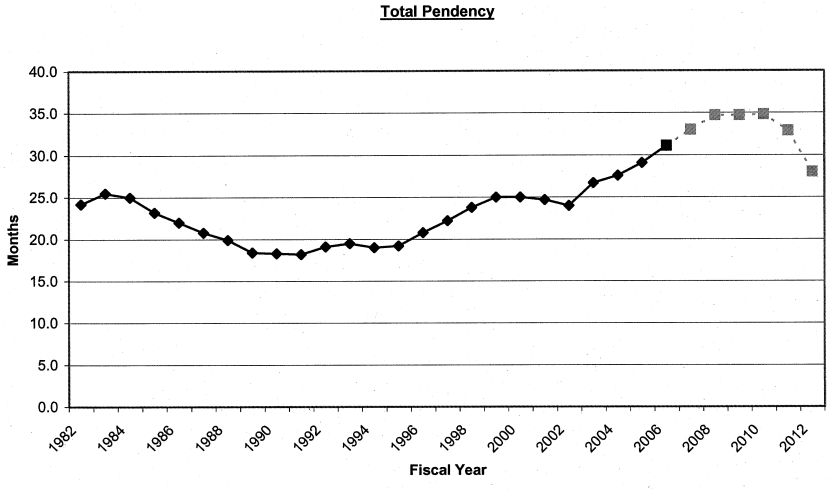
National Workforce so USPTO employees may "work from anywhere" in the United States.

Alternative approaches to examination.

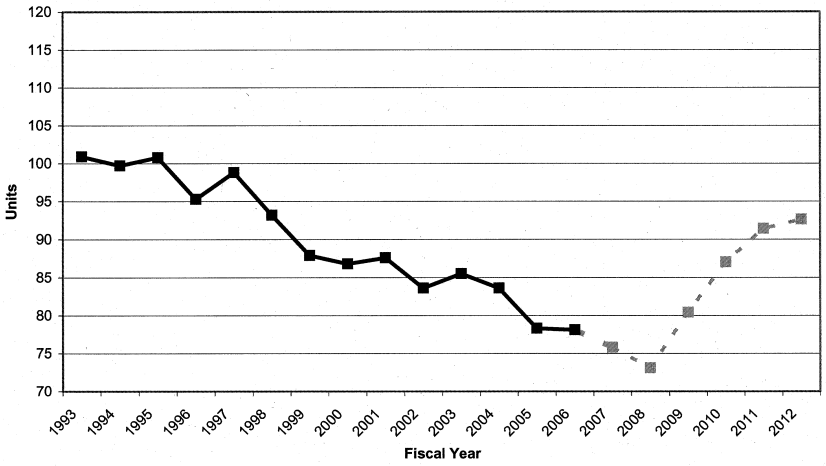
University certification program to prepare students for examiner jobs at USPTO.

The charts below illustrate the impact on the Pendency, Productivity, and Quality measures if the Proposed Applicant Quality Submissions are executed:

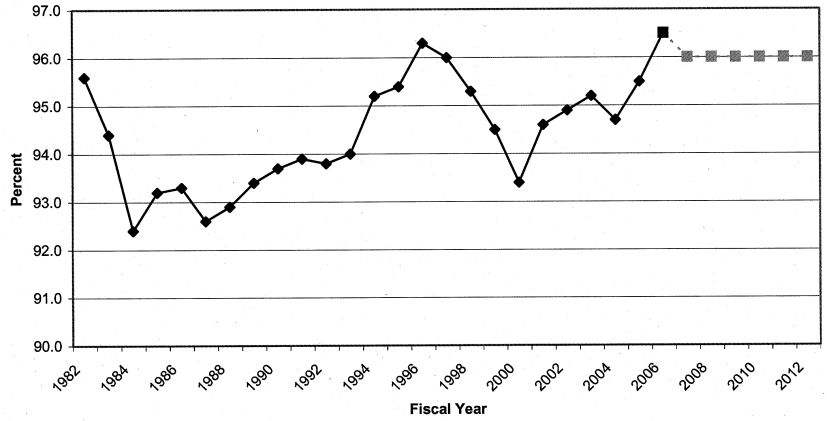
Fiscal year	Pendency	Productivity	Quality
2007	33.0	75.8	96.0
2008	34.7	73.1	96.0
2009	34.7	80.4	96.0
2010	34.8	87.0	96.0
2011	32.9	91.4	96.0
2012	28.0	92.6	96.0

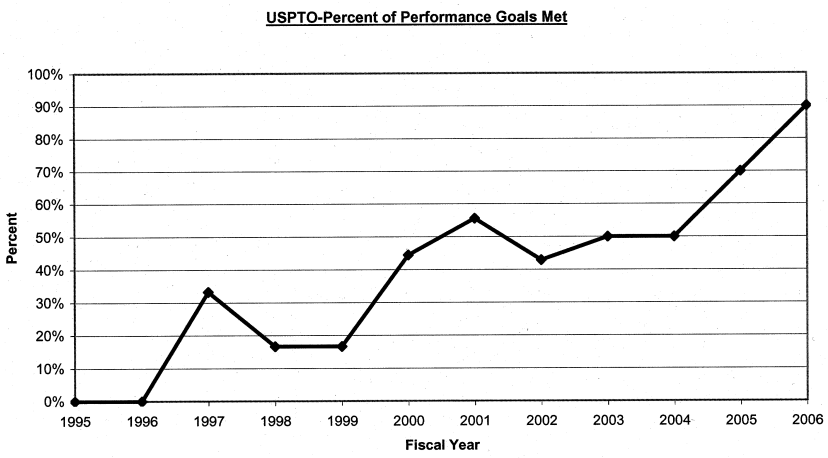


Productivity



Quality





As the chart above illustrates, in fiscal year 2006 the USPTO met 90 percent of the performance goals established pursuant to the Government Performance and Results Act of 1993 (GPRA), providing its best record to date for achieving important measures of performance and results.

This report lists and discusses our ongoing, planned, and envisioned initiatives intended to address the challenges facing the USPTO in terms of patent pendency, patent application backlog, and the effective recruitment, training and retention of patent examiners.

ADDRESSING PATENT PENDENCY AND APPLICATION BACKLOG

Hiring Patent Examiners

With full access to our collected fees, the USPTO hired a record 1,218 patent examiners in fiscal year 2006, exceeding our hiring goal by more than 200 examiners. The USPTO plans to hire 1,200 patent professionals a year in fiscal year 2007 through fiscal year 2012 for a gross total of at least 8,400 patent examiner new hires by end of year fiscal year 2012. After attrition, USPTO staffing increased by 683 in 2006 and will increase by 3,900 over 2006–2012.

While hiring a sufficiently qualified and productive patent corps is a critical factor in controlling pendency and reducing backlog, we recognize that hiring alone is simply not enough. Supplemental initiatives, including fuller participation by patent applicants as described below, will help us attain our long-term strategic goal of reducing patent pendency from the current 33 months to 28 months for final disposition, by 2012.

Full Access to Fees

We are thankful that the subcommittee and your House colleagues have ensured that our current fee schedule remains in effect for fiscal year 2007. We are also pleased that the fiscal year 2008 budget request gives the USPTO full access to the $1.9 billion in fees we expect to collect. This is the fourth consecutive year that the President's budget recommends full access to collected fees, and the USPTO appreciates the continued Congressional support for that funding level.

The Administration is considering for submission to Congress draft legislation that will make permanent our current fee schedule. We look forward to working with the subcommittee toward enactment of appropriate legislation.

Full access to user fees is needed to allow the USPTO to continue its successful model of disciplined focus on real measures that enhance quality and increase production, increase hiring and training, promote electronic filing and processing, provide telework opportunities for our employees, and improve intellectual property protection and enforcement domestically and abroad.

Full access permits us to finance the initiatives—particularly initiatives requiring long-term planning and commitment—necessary to providing and maintaining reliable, functioning systems. Without Congressional support, we would not be able to function in a business-like manner and achieve these results.

Electronic Filing and Processing

The USPTO continues to promote electronic filing and processing of patent applications as a means of reducing paper-based inefficiencies. Patents implemented the Electronic Filing System-Web (EFS-Web), a user-friendly, Internet-based patent application and document submission program. Prior to fiscal year 2006, less than 2 percent of patent applications were filed electronically. After working with the public and introducing the much-improved EFS-Web system in late 2006, a total of 14 percent of patent applications were filed electronically in 2006—with more than one-third being filed electronically in the last month of fiscal year 2006. We anticipate that electronic submission of new applications will grow to more than 50 percent in fiscal year 2007. We will work with our stakeholders to further promote electronic filing and interaction with patent applicants.

We are developing the electronic Patent File Wrapper (PFW) that in conjunction with current Patent Automated Information Systems will allow for a fully automated, text-driven patent application processing system.

Operating in today's wired world requires that the USPTO have full electronic processing that is safe, secure and continually available to employees, applicants and stakeholders. We will continue to work toward that goal.

Innovative Processing

The USPTO is developing and reviewing a variety of innovative patent processing initiatives including a new offering for the public called "Accelerated Examination." Under this program, which began August 26, 2006, any applicant who wants or needs quick turnaround can obtain a patent determination within 12 months. In exchange for this quick turnaround, applicants must file a complete application, agree to interviews and accelerated response periods, must file and prosecute their application electronically and must provide more information about the invention to the USPTO in the form of a prior art examination support document. The first application to be completed under this program was filed on September 29, 2006, and the patent issued on March 13, 2007 (less than 6 months from date of filing).

The USPTO is also cooperating in a pilot program involving peer review of patent applications. Up to 250 applications, assigned to Technology Center 2100, which examines computer-related technologies, will voluntarily be placed, by the applicants, on a non-USPTO web site for an expanded and public review by a peer group of patent users, attorneys and academics. The pilot group of applications will include applications filed by small entity filers. The public group will determine and submit to the USPTO what they consider the best available and relevant prior art. The pilot will test whether this peer review can effectively identify prior art that might not otherwise be found by our examiners during the typical examination process. We will also make an evaluation as to whether this process results in measurable examination timesavings and quality improvements.

We will continue to collaboratively work with our stakeholders to determine if there is some combination of examination alternatives to the current one-size-fits-all filing and examination process that would better meet applicants' needs while providing a more efficient use of USPTO examination resources.

The USPTO, with the help of its Congressionally mandated Patent Public Advisory Committee (PPAC), is reaching out to the intellectual property community to seek their input on improvements to the patent system in all areas including, but not limited to, examination, prosecution, enforcement and levels of patenting. Through the PPAC, we anticipate an open dialogue with patent stakeholders and the public as to what the Office needs to do to best protect and encourage innovation in America. We are open to all possibilities from minor improvements to a dramatic overhaul of patent protection, if necessary. We are looking at a wide variety of alternative examination products from those needing statutory changes to those that can be implemented immediately under our existing authorities. We look forward to working with the Congress and the public to develop these possible alternative examination products that effectively and fairly balance the needs of the Office and the interests of the intellectual property community to provide a system that allows for maximum enforceability.

Our long-term strategic goal is to reduce patent pendency from the current level of 33 months to 28 months for final disposition, by 2012. Metrics include reduction of the initial waiting time for patent applications (first-action pendency) in our most backlogged Technology Centers and successful implementation of various initiatives (such as Accelerated Examination) that ensure goal achievement by 2012.

The USPTO is both implementing initiatives and exploring strategies that will reduce the backlog of unexamined patent applications and improve the timeliness of a patent examination.

Applicant Quality Submissions

By shining the light inward on the USPTO, we have had the opportunity to improve our system and offer applicants new alternatives. As policymakers, we must also analyze how the patent system can be improved from the outside in. Perhaps the most important element of ensuring that patent examinations are of the highest quality and completed as efficiently as possible is what the applicant files.

The patent applicant has the most knowledge, the most opportunity, and the most to gain by providing the USPTO with the best possible information about his or her invention. Unfortunately, in many cases, applicants have expressed strong concerns about providing the USPTO with information about their applications. In some cases, applicants simply do not want to provide important information for fear that it will limit the scope of the patent they may receive (though such a limitation would be right under the facts and the law) or do not want to do the work associated with better defining their inventions. In some other cases, applicants or their attorneys recognize that providing information improves quality and timeliness but fear that the legal system unfairly punishes them with draconian penalties for innocently omitting information. The theory is that if one provides information, he or she must do so perfectly or potentially lose the patent; whereas, a failure to share any information carries no consequences.

Quality absolutely begins with the application. Nobody knows more about the invention than the applicant. In the Accelerated Examination Program—where the first patent issued in less than six months—the applicant is required to submit to an interview and to provide a search and a support document. Our limited experience with this initiative is that both applicants and examiners believe that more written and oral information from applicants improves quality and timeliness.

We would like to take the success of this model of applicant quality submissions to lower pendency, raise productivity and increase quality in all patent examinations. To that end, we believe that applicants should be given every opportunity and responsibility to provide more and better information to examiners about their inventions. For such a program to be successful, policymakers must work to ensure that more and better information does not become burdensome. Policymakers would also need to consider how the current doctrine of inequitable conduct may discourage applicants from fully and fairly sharing relevant information with the USPTO.

Rule Making and Examination Reform

We believe that to effectively address and control pendency, and reduce backlog, the USPTO needs to receive more and better-focused information from applicants themselves and from the public at large. The USPTO has proposed and will propose regulations and administrative changes governing submission of patent applications that will enable our examiners to make more efficient and informed patentability determinations.

First, we have proposed limiting the number of continuing applications and continued examination requests to provide an incentive for applicants to focus their initial patent applications on their inventive contributions. Second, we have proposed to limit the number of claims that are initially examined in order to provide an incentive to focus the examination process. The first and second proposals have optional procedures which continue to provide an applicant flexibility where the applicant may need additional continuing applications or initially examined claims upon a showing of that need or by shouldering additional responsibilities. Numerous comments have been received in response to these proposals and are being carefully considered prior to promulgation of any final rule. In parallel, we have proposed revisions to our information disclosure requirements to focus our limited examination resources on prior art that is most relevant to the examination process. Additionally, we are considering a new practice change to require applicants to conduct a pre-examination search and provide to the Office prior to examination a report on why they believe that they are entitled to the claims presented in view of the information discovered during that search.

Our hope is to achieve examination reform that creates better-focused examination and enhances information exchange between applicant and examiner. We look forward to working with the public and Congress to develop an enhanced examination system that effectively and fairly balances the needs of the Office and the interests of patent applicants, interested third parties and the general public.

Public Quality Submissions

While the USPTO currently has a procedure for submission of prior art after publication, which allows submission by third parties within two months of publication, the procedure does not allow explanations or other information about the patents or publications, absent express written consent of the applicant.

We look forward to working with Congress to develop a submission procedure that effectively and fairly balances the interests of the patent applicant, interested third parties and the general public.

We are also looking to provide assistance to the open source community in their development of an open source database to provide examiners with potential prior art.

Work Sharing

The USPTO continues to work with the world's major intellectual property offices to study, review and implement work-sharing efforts that promote examination efficiencies in each participating office. The USPTO launched a trial cooperation program with the Japan Patent Office (JPO) last summer to leverage fast-track patent examination procedures already available in both offices to obtain corresponding patents faster and more efficiently. It also permits each office to benefit from work previously done by the other office, in turn reducing examination workload and improving patent quality.

This program is a significant first step in cooperative efforts to support United States and Japanese industries in their global patent prosecution activities and represents the first concrete implementation of a work-sharing arrangement between the USPTO and the JPO.

The USPTO continues to have informal discussions on expanding the work-sharing program to other intellectual property offices, mainly in Australia, the United Kingdom, and Canada. The USPTO will continue its efforts in expanding this program and will develop a coordinated approach among the offices in order to streamline practices and procedures.

ADDRESSING RECRUITMENT, TRAINING AND RETENTION CHALLENGES

Making USPTO an "Employer of Choice"

Continuing to attract and retain the finest public servants is a growing challenge. Our employees are at the heart and soul of our intellectual property system, and we need to do everything we possibly can to ensure they have an environment of trust, respect and opportunity.

The USPTO has developed and implemented a variety of workplace-friendly, family-friendly initiatives that have earned the USPTO recognition by Business Week magazine as one of the best places in America to launch a career and to round out one's career. The USPTO has also been lauded by Families magazine as one of the best places in the Washington area to work if you have a family. We will expand and improve our workplace offerings and attributes to promote the USPTO's image as an "employer of choice."

Recruitment

The USPTO's recruitment efforts are strong and nationwide in scope. Planning efforts have culminated in targeted TV, print, radio and Internet banner advertising, and developing a brand image, "Examine the Possibilities". Additionally, in 2004, the USPTO increased career and job fair participation and, in 2006, participated in over 180 events throughout the country. Also, in 2006, a recruitment incentive (up to $9,900 per year for four years) was offered to computer and electrical engineers.

A pre-employment compatibility assessment tool has been developed and is in use for all examiners applying through USA Staffing.

We are exploring partnerships with universities to offer intellectual property courses to science and engineering students, develop an internship program, and train students in intellectual property to create a ready pool of potential examiner candidates.

Internal Communication

Consistent with recommendations made by the Government Accountability Office in 2005, the USPTO has implemented a wide variety of initiatives to address communication issues, including a pilot program for an Office of Internal Communications in October 2006.

The Commissioner for Patents and Deputy Commissioners host regular Town Hall meetings with employees at all levels throughout the Patent organization. First line supervisors are required to hold regular employee meetings and are held accountable through their performance plans. In 2005, monthly meetings were instituted with Patent management, Administration management and patent union representatives, as well as quarterly Joint Labor Management meetings.

In 2006, we also had the first ever Management Conference for all of the USPTO's managers, numbering over 500 employees. For two days, our managers attended

sessions and collaborated on best practices of how to manage the highly skilled and dedicated workforce at the USPTO.

On November 1, 2006, the USPTO held an agency-wide celebration event where management thanked and praised employees for their efforts in making 2006 a record-breaking year.

Training and Development

In fiscal year 2006, the USPTO implemented a university approach to training new examiners. The university method provides training to new examiners in a classroom setting for eight months, rather than using the traditional one-on-one training model. This allows us to deliver intensive training to the newly hired examiners, leaving more experienced examiners and supervisors to focus on quality examination and reducing the backlog. In fiscal year 2006, 123 examiners completed the university's eight-month program. So far in fiscal year 2007, a total of 303 new examiners completed the training, with an additional 451 examiners slated to graduate by the end of the fiscal year. To date, 871 patent examiners are either in the Patent Academy or have completed the eight-month program.

Patent examiner training programs have been enhanced to include eight hours of technical training. We will work to enhance the skill sets of examiners authorized to train others by providing formal training to all personnel who are responsible for training new examiners and reviewing their work.

Sixty-six patent examiners currently participate in USPTO's law school tuition reimbursement program, with tuition assistance up to 24 credits per fiscal year. In addition, tuition assistance up to $5,000 per examiner per fiscal year is available for technical courses.

Pay and Retention

Last year, 60 percent of all patent examiners exceeded their goals in production and received a bonus for exceeding those goals. We are proud of their achievements. The average total compensation package (salary plus bonuses) for patent examiners is $99,000. While the U.S. Government's average pay grade is at the GS–8 level, the average at the USPTO is GS–11.

All patent examiners received a 7 percent special pay rate increase in November 2006, making their total special pay rate a 10 percent increase.

The USPTO expects to increase productivity in patents by offering examiners more opportunities to determine when and how they do their work, and achieve higher bonuses. The USPTO is piloting a voluntary flat goal program for patent examiners that builds upon the successful system in Trademarks and moves production away from an hourly-based system. Highlights of the program include awards of up to $5,000 per quarter; flexibility in where work is done; and a predetermined amount of work based on grade and docket.

In 2006, USPTO management submitted proposals to patent union representatives for a new collective bargaining agreement that would replace a previous agreement negotiated in 1986. Proposals include enhanced patent examining monetary awards as well as a stand-alone quality award.

Because more experienced examiners naturally are able to review cases faster, and in a more accurate manner, the USPTO has implemented a program of recruitment bonuses to hire and retain the talented engineers and scientists we need to examine our increasingly complex applications. We are reviewing other possible programs to help us compete with industry for professionals in the "hot" technology sectors. We want to be an "employer of choice" to the pool of tech professionals.

The USPTO's fiscal year 2006 attrition rate was 10.6 percent—lower than comparable industry averages and a significant improvement over comparable past years. However, we believe we can further improve upon that number. The USPTO is reviewing additional incentive programs to recruit, retain and reward top performers. We will continue to become more flexible to enable us to attract and retain those top performers.

USPTO Telework—the "Gold Standard"

As we hire over 1,200 patent examiners a year, much of our human capital focus is on recruitment, retention, a balancing of work/life issues, less commuter time and more productivity, and the need to more efficiently manage our space.

In fiscal year 2006, a pioneer group of 500 patent examiners participated in the newly implemented Patent Hoteling Program (PHP). The PHP was developed using the very successful Trademarks telework program model. PHP is a voluntary program and provides patent examiners the ability to work from home with complete on-line access to USPTO resources. We will add 500 more examiners to the hoteling program each year for the next several years. The goal of the hoteling program is to change the boundaries of the old workplace patterns allowing for decreased com-

mute time, a more efficient use of office space, and even a more balanced lifestyle for our employees. This all translates into increased employee productivity and satisfaction, as well as higher employee retention.

Patents is also piloting a work-at-home program for technical support staff.

On a more long-term basis, we hope to create a workplace where an examiner can be successful from anywhere. In this regard, three possibilities are being investigated: (1) expanding the successful Patents Hoteling Program (PHP) in such a way as to create a more nationwide workforce; (2) creating remote or regional offices, or brick and mortar presences, in different locations across the country, selected upon a variety of factors such as where pockets of technology may be concentrated or there is increased access to a suitable workforce for hire; and (3) a storefront approach which, in a sense, is a hybrid of possibilities (1) and (2). The storefront approach would potentially provide a small-scale brick and mortar presence, or node, which could then act as a support center for employees participating in an expanded hoteling program.

With respect to expanding the current PHP program to create a truly nationwide workforce, the Office is currently engaged in conversation with Congress, OPM and GSA about addressing the present requirement that hoteling employees physically report into the Office at least one hour per week to maintain the Office as their official duty station. Round-trip commuting to the official duty station for an hour plus, which is the current requirement, results in a very unproductive day. A modification of this requirement would permit hoteling employees to relocate to geographic locations at further distances from the Office, thus enhancing the Office's ability to reach out to high quality talent pools and those individuals not interested in living in or financially unable to live in the Washington, D.C. metropolitan area. If the one-hour duty station requirement was lifted and USPTO was allowed a pilot or demonstration program, we would expect many retired patent examiners would consider working half-time or under the flat goal program. A further expansion on the second possibility (2) is that we might build, even locally, telework sites to provide employees with a brick and mortar presence to which to report, but one which may reduce or eliminate a great deal of their commuting time. The Office is open to all of these possibilities, or any combination thereof, as ways in which to better attract new employees, retain existing employees, and actively participate in e-government initiatives.

Retirees

The USPTO takes advantage of the knowledge and skills of retirees who have left the USPTO. The opportunities where this pool of candidates can help us are tremendous. While some retirees have returned as rehired annuitants, many opted to work for companies who have contracted with the USPTO in the areas of examiner training in the Patent Training Academy, help-desk service for our customers in our Inventors Assistance Center, and examiner recruiting. This has allowed the agency to free up valuable examiner resources to focus on patent examining.

The flexible work arrangements that the USPTO provides are very attractive and accommodating to retirees' schedules. Also, we expect that our vision of a truly nationwide workforce will include opportunities for USPTO retirees—including possible half-time or flat goal programs for retirees. The BusinessWeek recognition of the USPTO as one of the best places in America to round out one's career should allow us to recruit retirees from other industries as well.

CONCLUSION

This report has offered a comprehensive review of what has been done, what is in the process of being done, and what can still be done to further strengthen the patent system in the United States. While the Administration is committed to pursuing and improving upon its management initiatives and record level achievements in hiring, quality and production, electronic tools and teleworking, some of the key solutions to reduce pendency and optimize productivity and quality will require Congressional action.

Senator MIKULSKI. And then we can match performance with money.

Mr. GUTIERREZ. Yes.

Senator MIKULSKI. It will be your plan?

Mr. GUTIERREZ. Yes.

Senator MIKULSKI. Senator Shelby.

GROSS DOMESTIC PRODUCT REVISION

Senator SHELBY. Thank you, Madam Chairman.

Mr. Secretary, I understand—excuse me—that the announced quarterly gross domestic product (GDP) for the country contained a relatively large revision, we are all familiar with this, one-half of 1 percent downward from the amount estimated in January of this year. Such a revision has only occurred seven times in the last 30 years. While rare, this type of revision has impact on markets, and anticipate less volatility in the data released from the Bureau of Economic Analysis.

What procedure does the economic—Bureau of Economic Analysis—have to help lessen the odds that similar revisions will occur again in the future? Or will not occur?

Mr. GUTIERREZ. Yes, sir. Thank you.

Senator SHELBY. In other words, I know it's—you don't have all of the data and you're pushed to get it out.

Mr. GUTIERREZ. Right.

Senator SHELBY. And you revise it with more accurate data.

Mr. GUTIERREZ. Yes. Obviously it's a very complex set of sources that we have to be able to consolidate this one GDP number. I would say the one area that stood out as impacting that was the service industry. We know that we still have to make progress to be able to measure services, as well as we can measure manufacturing. We actually have $8 million in our 2008 budget to be able to measure all service industries. We're not covering all services today.

If I had to point to one thing, and there are many things, Senator Shelby, if I had to point to one thing that threw us off in that quarter, it was the service number. I think we can get better, and we need to get better, at measuring services, given that they're over two-thirds of our economy.

Senator SHELBY. You know, the Federal Reserve does a lot of measuring of our economy. Do you have an interoperable connection to the Federal Reserve on this? On the way you measure production and everything? You feed them things.

Mr. GUTIERREZ. Yes, sir.

Senator SHELBY. I thought you did.

Mr. GUTIERREZ. Yes, sir. We work very closely with them, with the Office of Economic Advisors, with Treasury and with Labor.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION'S EXCLUSION FROM AMERICAN COMPETITIVENESS INITIATIVE

Senator SHELBY. NOAA. Last year, Mr. Secretary, the President designated a National Institute of Standards and Technology, the National Science Foundation (NSF), and the Department of Energy's Office of Science as part of the American Competitive Initiative Act. However, NOAA was noticeably excluded from this program, and that's troubling. To me, NOAA stands out as an international leader in marine and atmospheric science, and as a cornerstone of our Nation's research community.

NOAA's education and outreach activities appear to fall directly in line with ACI's educational goals. Given NOAA's diverse research—you're very familiar with it—and innovative technology,

why was this agency not recognized as a candidate for the ACI Program, and does the Department intend to endorse NOAA in the future to become an ACI Program?

Mr. GUTIERREZ. Thank you, Senator. I think that's an excellent question.

Technically, it's not under the umbrella of the ACI, but we think about NOAA as very much part of our competitive advantage.

Senator SHELBY. I know that Senator Alexander is very involved in the competitiveness issue.

Mr. GUTIERREZ. We do think about it as our competitive edge. We believe that the management of our coastal marine resources is a competitive advantage, as we look at the rest of the world, and how they do it. It may not be under the ACI umbrella, but we think about it as very much a part of our competitive advantage.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL POLAR ORBITING OPERATIONAL ENVIRONMENTAL SATELLITE SYSTEM

Senator SHELBY. I hope you can get it under there, we'll have to see what happens.

NOAA, again. Last year, the national polar orbiting operational environmental satellite system—pronounce it, what, NPOESS program—was scrutinized for its mismanagement and lack of oversight. Now that the Nunn-McCurdy process has subsided, I feel that the Departments of Defense and Commerce have genuinely strived to regain control of the program, hopefully.

I'm still dismayed with the revised program plan. When I compare the new goals with the program's original prospects, I see that we've lost two of the six satellites, and 4 of the 13 sensors package, while adding 4 years of delay. Not to mention, a cost increase of $4.1 billion. Why are we spending more money, perhaps, to receive an inferior product? And how have the ramifications for this particular program impacted the rest of your Department's overall acquisition and procurement activities, and to ensure that the taxpayers do not see a situation like this again? I know, it's a big-ticket item.

Mr. GUTIERREZ. It is, Senator. And, I appreciate the question, this is a very important topic. Twenty-five percent is a tremendous overrun. Just so that you know, I have met with the chief executive officers (CEO) of Lockheed Martin and of Northrop Grumman as soon as we heard about this. I'd say two big things contributes to the overrun. One is the process of evaluating these bids. Too often, I think, we go to the lowest bid, and not necessarily understanding that that supplier can come back and increase the amount after we have approved it.

Senator SHELBY. It's not a good way to do business.

Mr. GUTIERREZ. It's not.

Senator SHELBY. You were the CEO of a large company.

Mr. GUTIERREZ. Absolutely. I used to have to go to my board for a 10 percent overrun. And, it was a very bad day, so this is a very bad day.

Senator SHELBY. Twenty-five percent overrun is——

Mr. GUTIERREZ. Twenty-five percent.

Senator SHELBY [continuing]. Should be a wake-up call.

Mr. GUTIERREZ. It's 25 percent, and as you say, the scope of what we thought we were getting has been reduced. We're getting less than what we thought we were buying at the beginning. It is absolutely not acceptable. A lot of it also goes to our processes. This is Air Force, NOAA and NASA working together. Too often, we have a handoff of individual project timelines to the other agency. We need to have someone managing the whole process. I think there's a lot that we can be doing, and we are doing. I get a briefing on this probably once a week from my Deputy, who is all over this. And we still have to stay very close, because I don't want to have another situation where I come back to you and say that the project is off course again. I can assure you that this is one of the items that rarely does the day go by that I don't think about this.

Senator SHELBY. If you put your background in business to this program, and other programs, you'll meet the accountability standard that Senator Mikulski talked about earlier.

Mr. GUTIERREZ. Yes, Senator.

Senator SHELBY. Thank you, Madam Chairwoman.

Senator MIKULSKI. I'm going to associate myself with the line of questioning of Senator Shelby. We're in absolute agreement on the fact that this has to be fixed.

Senator Reed, Senator Alexander came first—I would like to turn to call upon Senator Alexander, noting that he has been truly one of the leaders in our bipartisan effort to create a framework for innovation, and implementing the National Academy of Science report, "Rising Above the Gathering Storm." We're really happy to have him on the subcommittee.

AUGUSTINE REPORT ON IMMIGRATION

Senator ALEXANDER. Well, thank you Madam Chairman, and Senator Shelby. I'm glad to be here with you, especially because of that interest, and I want to thank Senator Mikulski—there was no more enthusiastic supporter for the Augustine report, and the work that we have done over the last 2 years than she has been.

And, Mr. Secretary, I want to ask you a question about competitiveness—and this also relates to some work the chairman's done over time.

At the Oak Ridge National Laboratory, which has led our effort to help the United States capture the worldwide lead in computing, it has the largest new materials machine in the world, it's the world's largest energy laboratory, the top three people there all have green cards. Fifty of the 100 American Nobel Prize winners in physics are immigrants, or are foreign-born. We have more than 500,000 foreign students at our colleges, universities—all of these people are helping create this incredible standard of living we have in this country, creating jobs for us.

Now, when the Senate passed the immigration bill, which you are very much a part of these days, I know, from talking with you—we seemed to have a consensus that we ought to do what the Augustine report, the National Academy's report describes as, "instituting new skills-based preferential immigration options." In other words, we've got 500,000 or 1 million people coming into this country legally every year, we may have that many illegally, if we secure the borders, that means we'll have 1 million or more people

coming in every year, and I believe there's a consensus in the Senate that we ought to—that we ought to make sure that we make it easier for us to in-source brain power. We outsource jobs, we can in-source brain power.

And, there were three provisions in the Senate-passed immigration bill to help do that, improving visa processing, giving a green card to doctorates, to foreign students who received their doctorates in science, technology, engineering, math, and if they had jobs, increasing the H1B visas for those sorts of people coming to our country. I think Senator Gregg also may have gotten onto the bill a provision that took a part of the visas that are in the lottery and made those more available.

But, what I would like to do is ask you to comment on that, and to encourage you—since I know you're working on immigration, that with your background—both as a business leader, and someone who's, who I've heard speak eloquently about the importance of immigration to our country, and who understands it very, very, very, very well. I wonder if you can think of more ways, as we deal with immigration this year—more ways for us to institute skills-based preferences for people coming to our country that will increase our brain power advantage, which creates new jobs.

Mr. GUTIERREZ. Yes, Senator, I think there's broad agreement on this. Many of the scientists who are driving Chinese innovations, and Chinese industries, as well as Indian industries were educated in the United States. We are giving these foreign scientists the best education you can get in the world, and then because they can't stay here, they have to go back home and compete against our companies.

We have about 80,000 higher learning students from India and about 60,000 from China. Essentially, our quota just will not absorb all of them. So, the challenge here is to expand the quota, and be willing to give more green cards, and more residency status to these graduates. This is part of our comprehensive reform, this is the high-skilled portion of it that we don't talk that much about, but is perhaps just as important as anything else.

Senator ALEXANDER. Well, and, I guess the point of my question is, is to encourage you in it. Because, I know you're going to be in the middle of these debates and discussions, and I don't think it lacks for support in the Senate. We're for it, but we need some more creative ideas about how to do it. Sometimes ideas fail around here for lack of the idea.

So, if you can suggest two or three other ways in the next few months that we could beef up whatever immigration bill passes, I'll bet you'd get a lot of support for that, and we need to do something about the provision in the law that makes a future Nobel Prize winner—American Nobel Prize winner—who starts out being born in India, today we make that person swear, before they come over here to get their graduate degree, that they're going home, when, in fact, it's in our interest for them to stay here. And, as we know, Chinese and Indian universities are now recruiting, back to their own universities, the best Chinese, Indian professors to help beef up their competitiveness efforts.

Mr. GUTIERREZ. If I could add something, because I think you're touching on something very important.

If we go back to, say, the last 50 years, some of our best scientists came to our country during World War II from Europe and they contributed immensely. We have the ability to bring the best brains in the world today, and we just can't let more time go by, because they want to do it, we can do it, there's no excuse for not doing it. So, I appreciate your leadership on this.

Senator ALEXANDER. Thank you, Madam Chairman. And, if I may say, Madam Chairman, I think if we put our minds to it, and we're creative, we could to any immigration bill that passes, more support for those bringing in people with those sorts of skills.

Senator MIKULSKI. Mr. Gutierrez himself is an immigrant, and I bet when his family came here from Cuba, they didn't know that this was going to be a future entrepreneur that would be the Fortune 500 corporation, and lead a major Government agency, and had the ear of the President of the United States any time he wanted to. So, yes, immigration is a challenge.

Senator Reed.

MANUFACTURING EXTENSION PARTNERSHIP AND ECONOMIC DEVELOPMENT ADMINISTRATION FUNDING

Senator REED. Thank you very much, Madam Chairman, and Senator Shelby.

Mr. Secretary, welcome, thank you.

The Department of Commerce plays a very critical role in my home State of Rhode Island, I was very pleased recently when Admiral Lautenbacher announced that NOAA was considering the home porting of the Okeanos Explorer—NOAA's first ship of ocean exploration—in Rhode Island. And I look forward to working with you and the admiral to ensure this effort is completed.

There are two issues I'd like to address, first is a manufacturing extension partnership program (MEP)—I'm disappointed that a cut in the program is included in the budget. It's absolutely critical—we all say this, manufacturing is such an important part in not only the economy, but the fabric of every community in America, I think we have to do more.

And second, with respect to the Economic Development Administration (EDA), the proposal for the second year in a row to transform core programs into a regional development account, funded at about $170 million, to support large regional-based development projects. It's my understanding that the existing EDA program has received very high marks from the Office of Management and Budget (OMB) and independent analysts for their assistance to local communities with respect to public works, and economic justice, technical assistance, and I'm just wondering why we would abandon a proven model, and adopt this regional approach—at least propose it.

Mr. GUTIERREZ. Yes, Senator, we're obviously committed to it, and we're not thinking of abandoning it. We did have to decide strategically as to where we put the funds. Do we invest in high technology, basic research, and maintain those other programs, as you say, which are very important—especially EDA—where we believe we do invest to get a return? The balance we found was with $170 million, we are trying to be more efficient by having a regional development account, so we can continue to contribute to

these communities, while at the same time, put money behind the long-term research.

I understand your concern, and this is a topic that I knew would come up, because MEP and EDA are both areas that warrant much debate. But, it was a choice that we made and we felt that we were looking to the longer term.

Senator REED. Well, Mr. Secretary, one of our—my concerns—is that with a regional approach you lose focus, and there is the tendency, I think, to—in that respect—to see these accounts diminish, not expand. And I think we've got to expand these accounts for the reasons you've suggested.

And one of the things that's a bit perplexing is that the EDA proposal attempts to cut $80 million this year. A year ago you were requesting a $40 million increase, which would suggest that you were very enthusiastic about EDA—what's changed?

Mr. GUTIERREZ. Well, 2 years ago, you may recall, we were looking at strengthening America's communities initiative, which would have combined the block grant programs that are in Housing and Urban Development (HUD) with EDA, and so we are actually moving more money into this model.

What we'd like to do is look at this regional development account idea, develop a plan to make it more efficient—not just for us, but for the users—and come back with a plan, and share how we believe we can make it work with $170 million. We wouldn't go ahead and execute this without at least coming back and talking with major stakeholders as yourself.

[The information follows:]

MEETING WITH SENATOR REED'S STAFF ON THE EFFICIENCY OF REGIONAL DEVELOPMENT ACCOUNTS

Although nothing has been scheduled at this time, EDA will arrange for a meeting with Senator Reed's office to discuss the efficiency of Regional Development Accounts.

Senator REED. Well, Mr. Secretary, I was actually not impressed with the strengthening American communities approach, which would have put EDA proposals together with HUD funding. And, it looks like this budget—there's diminishing EDA, and the HUD budget, too, is being squeezed hard, which is not going to strengthen our communities. And, I think, when you go to a regional basis it's sort of a toss-up, who gets what, and again, I'm concerned—terribly concerned.

So, I appreciate your willingness to talk about this, but this is something that is, again, I think we'll revisit this.

I've mentioned before, my concerns about the manufacturing extension partnership centers. Dr. Jeffrey—Dr. Jeffrey will be testifying later, indicated there's going to be re-competition, because the proposed $46 million fiscal year 2008 is not sufficient to support the National budget? Or, that's a question I have—what is this re-competition about?

Mr. GUTIERREZ. We haven't really honed in on re-competition as a solution. We obviously have to do a lot of thinking as to how to make the $46 million go as far as possible. Understand that that's one-third of the total amount; there's private sector and there's local money.

But, we haven't recommended re-competition as the course of action. Again, we'd like to go back, think through this, and discuss it with you once we have a better plan in place.

Senator REED. Well, thank you, Mr. Secretary.

Mr. GUTIERREZ. Thank you, sir.

Senator REED. Thank you, Madam Chair.

Senator MIKULSKI. Senator Kohl.

MANUFACTURING EXTENSION PARTNERSHIP

Senator KOHL. Thank you very much, Madam Chairman.

I'm wanting, also, to discuss the manufacturing extension partnership account with you, Mr. Secretary. It's—and perhaps you're not fully familiar with it, because your job is so broad, so big, and has so many different pieces to it, and I can understand that.

But, the manufacturing extension partnership has been a big success, at a relatively low cost, at preserving and creating more jobs in small and medium-sized manufacturing companies.

I'm very familiar with it in my State because it's been a very active program, it's helped hundreds and hundreds of companies—many of whom I've visited—and gotten personal experience in seeing what they've done and listened to the accolades expressed by management, as well as those people who are MEP employees, go on to companies, seen what they've done, seen the results that they've produced in terms of increased efficiencies in these companies that have allowed these companies—in some cases—to come back from near bankruptcy. But, in many cases, just to continue to grow and produce sales and profits and employment. Our manufacturing jobs, which, of course, are critical and crucial for our economy. It's a success story, you know? It's something that I would hope that you would all talk about, and want to keep, at least at its present level of funding, which is $106 million, roughly $2 million per State.

And, as you indicate, it's complemented by State funding, as well as funding by the companies who use it. So, it's not one of these programs that we just sort of throw money at the wall, here at the Federal level, and hope that it may do some good—it is funded, as well, by the States, and the companies that use the service.

I went to a company in Wisconsin over the weekend, by coincidence. And they're a company that is presently using the MEP program, and they just rave about how MEP has come in and helped them to improve the efficiency of their business.

Now, in light of that, could you say something that would encourage us to believe that we're not going to have to go back to the mat again this year as we did last year and got the funding restored? Several of us Senators—and, you know, we got—it was cut last year and we got it restored to its funding level, and now here we come back this year, and it's cut in a similar fashion. And if we have to, you know, we'll fight like heck to get that funding back, and I hope, successfully. But, it would be nice if we wouldn't have to do that. And, you know, I'd just like to hear something from you.

Mr. GUTIERREZ. I understand your concern, let me just say that. We're constantly faced—and we do go through this, pretty much, every year—we're constantly faced with the choice of where do we allocate the money. And we have been—especially over the last sev-

eral years—moving more and more toward what we believe is the public sector's role, which is basic research.

On the MEP, because we play a matchmaking-type of role, we try to pair up private sector needs with consultants, that perhaps we can continue to play that matchmaker role, more efficiently, more productively, without giving up on the program. We've got the network in place, that's not going to go away. So, we want to keep the program going, understand that it is operational in the sense that, these are companies that are up and running, working with consultants, trying to get better rates, trying to match up consultants that are more suited with specific companies.

So, not giving up on the program, while being able to put more money behind the long-term research. As you know, when we make these choices, it never comes out perfectly, and there will be those who are not satisfied with that. But, that's sort of the thinking, and there's plenty of work that we need to do to get inside these offices and understand, how can we serve our customers with less money? My commitment to you is that I will do that and I will spend time on that, and try to stretch it out as much as possible.

Senator KOHL. I'm listening, and I'm trying to understand and, you know, and you speak very clearly and directly, which I appreciate. But, here's a program that works, Mr. Secretary. It works. I'm, you know, sometimes we come to these sessions and you make out a budget and you try and cut the fat off the bone, which, you know—which, what we're all wanting to do, the programs that don't work very well. But, I have not heard you say—or anybody say—that this is not a program that works.

And when you have a program that works at a relatively modest cost, particularly in keeping manufacturing from getting worse. Explain to me again, I mean, again—why try to knock this program off, you know, off its stool? It works. I'm familiar with it in my State and other States, and again—I don't just listen to some public relations (PR) people putting out a release, I've visited dozens and dozens of companies that have used the MEP program, and that it does work, in helping, and to become more efficient by bringing in—as you know—experts who are federally funded, at least, you know, they're Federal employees, but they also get paid by State and—and they come in and they do a job in making the company more efficient and more effective and more profitable.

Well, I guess I'm—I don't want to, I don't want to ask you to repeat what you've already said. But I—I'm surprised. You're a person who comes from the world of business, and so do I. And, I know you're concerned about dollars, and dollars spent, and value return for dollars spent and how important that is. And, I can tell you, this is a really, really good program, and you need to be proud of it. And that's not to say, "I'm proud of it, but I'm cutting its budget," because those things don't comport. If I'm proud of it, and it's a modestly funded program, then I'm not going to be cutting it.

And, so somewhere in your Department, somebody's not very proud of it, and somebody thinks it's not a very good program. And, I'm here to tell you—from my experience and my knowledge of the program, Mr. Secretary, it is a good program. And it deserves your sweat and effort to keep it funded at its currently modest level.

And with that, whatever you say, I will not respond and try to be critical, but I'd like to hear one last comment from you, and then I'll quit.

Mr. GUTIERREZ. What I will say is there isn't a disagreement that there's a concept and an idea and a model that could work, and that has worked. We have examples of projects where there has been a success. Not all projects have been successful and, perhaps these are outside of your State, or in other parts of the country. Our challenge is to focus our money on those projects that are successful. We're trying to cut off the tail that isn't successful, and trying to get a lot better at putting the money behind those projects that do have a return.

That's what I would do with the $46 million, as opposed to the $110 million, or $105 million. What we would try to do—is allocate the money to projects that do have a return, because there are some that don't. I think our challenge is to identify those, and we should have enough experience to have a better sense of which ones those are.

I understand your concern. I don't think there's anything I could say to convince you, but we do think about these things, and we take up the challenge and we try to make the most of it.

Senator KOHL. Thank you.

Thank you, Madam Chair. Chairwoman.

Senator MIKULSKI. Thank you very much, Senator Kohl. We appreciate the rigor of your questions, and you've expressed many of ours.

Mr. Secretary, in the interest of your time and ours, we're not going to go to a second round of questions. We're going to submit them—ask our colleagues to submit them in writing. And we know that the international markets are rattled, and we have a second panel, and we want to continue before the noon hour.

Colleagues will submit questions for the record, know that we will have ongoing concerns raised by members. NOAA—why isn't it in the competitive agenda? How we can put it in? How we can make sure the satellite program is back on track, the follow up on the patents, we'll be talking to Mr. Dudas in a minute or two, and then also, the census, because we're concerned about the security issues at the Census, and also the fact that as of this moment, the Director and the Deputy have resigned, and people are in an acting category. And, as we get ready for 2010, which is going to come so quickly, we've got to make sure that our census not only has the technology, but the leadership to do it.

So, those would be the areas that I think we look forward to following up. So, thank you.

Mr. GUTIERREZ. Thank you.

Senator MIKULSKI. And, colleagues, we'll submit it for record.

Thank you very much, Mr. Secretary.

CENSUS DEPUTY DIRECTOR

Mr. GUTIERREZ. Madam Chair?

Senator MIKULSKI. Yes, sir.

Mr. GUTIERREZ. If I may?

Senator MIKULSKI. Yes, sir.

Mr. GUTIERREZ. We have named Jay Waite the permanent Deputy Director at Census. He is permanent, and we will bring the person who will be nominated for the Director job as soon as we have that person.

Senator MIKULSKI. Well, we look forward to that and working with our authorizers for an expeditious confirmation. So that we're all going in the same direction.

Mr. GUTIERREZ. Thank you.

Senator MIKULSKI. Thank you very much, Mr. Secretary.

Mr. GUTIERREZ. Thank you very much.

Senator MIKULSKI. Until we meet again.

Mr. GUTIERREZ. Thank you, thank you.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

STATEMENT OF DR. WILLIAM JEFFREY, DIRECTOR

Senator MIKULSKI. Now the Chair calls to the table, as our Secretary departs, the Director of NIST, Dr. Jeffrey. For the record, it is the National Institute of Standards and Technology, and also, Mr. Dudas, the head of the Patent Office.

We're really glad to see both of you. As you can hear the things of the subcommittee, and the fact that we have such a bipartisan commitment to innovation, and you're, you're—you're part of the A-team on this. Both, what you provide in terms of research, and also service to the private sector, it's a unique way that this country operates, and then—that if we invent it, we gotta protect it. And you know the challenges there. So, ours is not meant to be a schoolmarmish hearing, but how do we get—help you get the results that our country really needs this minute?

So, how about if we lead off with Dr. Jeffrey, and then, Mr. Dudas, we're going to turn to you, okay?

Dr. JEFFREY. Thank you, Chairman Mikulski, Ranking Member Shelby, and members of the subcommittee.

I am pleased to present the President's 2008 budget request for NIST. This is a strong budget that will further enhance our ability to support the measurement and standards needs of U.S. industry, and universities.

NIST has a long history of being at the forefront of new innovations, through our measurements and standards. In 2003, the National Academy of Engineering identified the greatest engineering achievements of the 20th century. NIST measurements and standards were integral to the successful development and adoption of virtually every one. Nineteen retrospective studies of economic impact show that on average NIST labs generated a benefit to cost ration of 44:1 to the U.S. economy.

The high rate of return results from the fact that new measurements or standards benefit entire industries, or sectors of the economy, as opposed to individual companies.

For example, NIST researchers recently developed new measurement techniques that cut up to 80 percent of the cost and time for industry to develop advanced materials. As one industry scientist put it, "NIST scientists are reawakening a major element of creativity that analytical science almost lost."

NIST also operates world-class user facilities. Last year approximately 2,000 researchers from 60 different industries leveraged the NIST Center for Neutron Research, or the NCNR. A National Academy of Sciences (NAS) report describes the NCNR's capability to image an operating fuel cell as "a considerable achievement," and "one of the most significant analytical advances in the fuel cell realized in decades." Industry scientists have stated that the re-

search performed at the NCNR has allowed them to jump 5 years ahead in fuel cell development.

To prepare for the future, NIST is working with industry to identify critical measurement barriers to innovation, evaluating its physical infrastructure, forming new and strengthening existing partnerships, and updating the ways it stimulates the knowledge transfer from its labs to industry and academia.

The increased funding provided through the budget request will directly support innovative advances in broad sectors of the economy, as well as improve the safety and quality of life of our citizens.

For example, the research initiatives will speed the development and foster the adoption of nano-technology products, and provide the physical measurements to ensure their safety, accelerate the revolutionary economic potential in exploiting unique properties of the quantum world, provide confidence and reduce uncertainty in measurements supporting global climate change models, reduce the risk to communities, as they encroach on hurricane-prone coasts and fire-prone wild land/urban interface regions, and enhance the safety of new and existing structures from the catastrophic impact of earthquakes.

To meet the demands for measurements at ever-smaller scales, at faster rates, and with more accuracy, requires excellent laboratory and user facilities. The 2008 budget request, therefore, includes capacity and capability improvement at both our Boulder campus, and the NCNR.

The budget request for MEP is identical to last year's request, and is a reduction of $58.3 million from the fiscal year 2006 enacted level. I recognize the difference in priority between the administration and Congress regarding the Federal funding level for the MEP program.

One thing you can be absolutely certain of—regardless of the final appropriations, NIST will execute this program in the most effective manner possible, to support the Nation's small manufacturers.

No funds for ATP are requested in the President's 2008 budget. The 2006 enacted budget was consistent with the phase-out of the program. Since the 2007 full year continuing resolution, however, included funding for ATP, we will be initiating a new competition.

In summary, recent NIST measurements and standards research have enabled innovations now embedded in the IPOD, body armor—saving the lives of domestic law enforcement officers and our service men and women overseas—and diagnostic screening devices for cancer patients, making their treatment more targeted and accurate. The results of NIST research can be found in virtually every manufacturing and service industry.

PREPARED STATEMENT

For more than a century, NIST research has been critical to our Nation's competitiveness. The increased funding requested for NIST will directly support innovations in broad sectors of the economy that will, quite literally, define the 21st century.

Thank you, and I'd be happy to answer any questions.

Senator MIKULSKI. Thank you very much, Dr. Jeffrey, and we will be asking you questions.

[The statement follows:]

PREPARED STATEMENT OF DR. WILLIAM JEFFREY

Madam Chair Mikulski, Ranking Member Shelby and members of the subcommittee, I am pleased to appear before you today to present the President's fiscal year 2008 budget request for the National Institute of Standards and Technology (NIST). This is a strong budget for NIST and it will further enhance NIST's ability to support the measurement and standards needs of U.S. industry and universities. The fiscal year 2008 request of $640.7 million includes $594.4 million for NIST's core (encompassing NIST's research and facilities) and $46.3 million for the Hollings Manufacturing Extension Partnership. The budget for the NIST core represents an 11 percent increase over the President's fiscal year 2007 request and a 21 percent increase over the fiscal year 2007 continuing resolution (H.J. Res. 20) recently signed by the President (Public Law 110–5). This funding supports NIST's mission to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards and technology in ways that enhance economic security and improve our quality of life.

NIST's Impact on Innovation and the Economy

NIST has a long history of being at the forefront of new innovations through our high-impact measurements and standards. In 2003, the National Academy of Engineering identified 20 of the greatest engineering achievements of the 20th century—including automobiles, aircraft, lasers, computers, and the internet. NIST measurements and standards were integral to the successful development and adoption of virtually every one. Now NIST is paving the way for the greatest achievements of the 21st century which are still yet to be imagined.

NIST's measurement science and standards form part of the foundation upon which innovation is built. Just as the Nation's physical infrastructure (e.g., roads or power grid) define the Nation's capacity to build and transport goods—the Nation has an innovation infrastructure which defines the Nation's capacity to innovate. And investment in long-term basic research like that done at NIST is an integral component of the innovation infrastructure. As stated in the National Academy of Sciences' Rising Above the Gathering Storm, "The power of research is demonstrated not only by single innovations but by the ability to create entire new industries."

NIST researchers are world leaders in their fields. They frequently arrive at the "cutting edge" of science before anyone else. And once there, they partner with industry and academia to identify and overcome barriers that can slow or even halt the progress of new innovations. With the proposed fiscal year 2008 budget, NIST will continue developing the measurement and standards tools that enable U.S. industry to maintain and enhance our global economic competitiveness.

NIST continues to meet the Nation's highest priorities by focusing on high impact research and investing in the capacity and capability of our user facilities and labs. This emphasis is validated by the high rate of return to the Nation that the NIST labs already have demonstrated. Nineteen retrospective studies of economic impact show that, on average, NIST labs generated a benefit-to-cost ratio of 44:1 to the U.S. economy. The high rate of return results from the fact that new measurements or standards benefit entire industries or sectors of the economy—as opposed to individual companies.

NIST supports U.S. innovation and economic competitiveness primarily through its measurements, standards, and national user facilities. Recent NIST successes highlight the importance of each of these critical components and illustrate how NIST's labs are able to return such a large benefit to the Nation:

Measurements.—NIST researchers recently developed new measurement techniques that allow for rapid and cost-effective assessments of advanced materials that are used in a range of products from new detergents to improved adhesives for next-generation electronics. Previously, it could cost industry $20 million to develop and understand the characteristics of one new material. With this NIST measurement advance, the cost and time are estimated to have been cut by 80 percent. To facilitate the transfer of this technique to industry, NIST organized an open consortium now consisting of 23 members that are learning to use and adapt these new measurement techniques. As a scientist from Honeywell International put it, ". . . NIST offers an invaluable resource to show what can be done, and how to go about it. NIST Combinatorial Methods Center scientists are reawakening a major element of creativity that analytical science almost lost."

Standards.—Nanotechnology has the potential to revolutionize manufacturing. And one of the most promising nanomaterials is the carbon nanotube. Carbon nanotubes have unique electronic and mechanical properties that lend themselves to a variety of applications, ranging from the development of stronger and lighter materials to nanowires and transistors for miniature electronics. Regardless of the potential application, the quality of the materials is paramount. Unfortunately, current production techniques for carbon nanotubes result in products with high levels of uncertainty in their quality and uniformity. To address this concern, NIST is currently developing a carbon nanotube reference material. This reference material, when deployed, can be used by any nanotube manufacturer to validate their product's quality, purity, and consistency and accelerate the adoption of carbon nanotubes into more sophisticated devices.

National User Facilities.—NIST operates world-class user facilities that benefit the entire U.S. research community. Last year, approximately 2,000 researchers from 60 different industries across the country leveraged the NIST Center for Neutron Research (NCNR). One recently developed application of the NCNR was to image the interior of operating fuel cells to help improve the efficiency and durability of these devices. Large and small companies involved in the manufacture or use of hydrogen fuel cells, including General Motors, Daimler-Chrysler, Dupont, and PlugPower, have benefited from this new capability. The NCNR is the premier facility in the world providing this capability. A National Academy of Sciences report describes the NIST efforts in regards to fuel cell technologies as ". . . a considerable achievement and one of the most significant analytical advances in the membrane fuel cell realized in decades. The NIST facility offers the entire fuel cell community unique research opportunities that previously eluded them." Industry scientists have stated that the research performed at the NCNR has allowed them to jump 5 years ahead in terms of fuel cell development.

The President recognized NIST's critical role for the Nation as part of the American Competitiveness Initiative (ACI). The ACI describes NIST as: ". . . a high-leverage Federal research agency that performs high-impact basic research and supports the successful technical translation and everyday use of economically significant innovations." Under the ACI, overall funding for NIST's core, the National Science Foundation, and the Department of Energy's Office of Science is together slated to double by 2016.

Preparing for the Future

The 21st century will be defined by technology innovations that fundamentally change the products and services available, the way they are manufactured and provided, and the impact on our quality of life. These advances will arise from basic research now beginning in, for example, nanotechnology, quantum science, and alternative energies—all areas in which NIST has a strong and increasing focus with its investments.

The goal of increasing physical sciences research at NIST (along with that supported by the National Science Foundation and the Department of Energy's Office of Science) provides a unique opportunity to strategically establish the programs, plans, and infrastructure that will more than double the impact that NIST has on the economy. To prepare for the future, NIST is working with industry to identify critical measurement barriers to innovation, evaluating the capacity and capability of NIST's physical infrastructure, forming new and strengthening existing partnerships, and updating the ways it stimulates the knowledge transfer from its labs to industry and academia.

For example, over the past year, NIST worked with over 1,000 experts from industry and universities to identify measurement barriers to innovation in a number of critical industry sectors. Over 700 technical barriers were identified, analyzed, and documented in a report. NIST is now in the process of working with industry, universities, and other government agencies to address many of these identified barriers over the coming years.

In terms of facilities, NIST has conducted a rigorous evaluation of its laboratory capacity and capabilities on its Boulder, Colorado, campus. This review found facilities' shortfalls in our ability to meet both current and projected industry and university needs in a number of important areas. Examples include the high-speed and high-frequency measurements required for electronics, defense, and homeland security; measurements and tests at the single atom level; and improved methods for measuring time, an area expected to vastly improve navigation and positioning systems. Each technical area was evaluated in terms of necessary laboratory conditions (to include stability of temperature, vibration, and humidity, as well as air cleanliness). As a result of this assessment, new laboratory space to meet the nation's

needs well into the 21st century is proposed in the fiscal year 2008 budget (Boulder Building 1 Extension).

NIST also serves industry and academia by being a steward of world-class user facilities. As part of the ACI, NIST identified two important opportunities first called out in the fiscal year 2007 budget and enhanced in the fiscal year 2008 budget—increased capacity and capability of the NIST Center for Neutron Research and creation of the NIST Center for Nanoscale Science and Technology. Both of these facilities are designed to stimulate progress in support of our Nation's economic competitiveness.

The ACI provides NIST the opportunity to further promote U.S. innovation and industrial competitiveness. With focused, world-class research and facilities, NIST will have a greater impact on the 21st century economy than it did even over the past century.

Fiscal Year 2008 President's Budget

The increased funding provided through the fiscal year 2008 request will directly support innovative advances in broad sectors of the economy as well as improve the safety and quality of life for our citizens. The following table summarizes the proposed fiscal year 2008 budget. In this table we show both the fiscal year 2007 President's budget and the fiscal year 2007 continuing resolution (Public Law 110–5) for comparisons as different baselines.

BUDGET SUMMARY SHOWING BOTH FISCAL YEAR 2007 PRESIDENT'S REQUEST AND PUBLIC LAW 110–5 AS BASELINES

[In millions of dollars]

	Fiscal Year 2007 President's Request	Fiscal Year 2007 Continuing Resolution (Public Law 110–5) [1]	Fiscal Year 2008 President's Request	Change Between Fiscal Year 2008 and Fiscal Year 2007 Request	Change Between Fiscal Year 2008 and Public Law 110–5
STRS (Labs)	467.0	432.8	500.5	+33.5	+67.7
CRF (Facilities)	68.0	58.7	93.9	+25.9	+35.2
Core Subtotal	535.0	491.4	594.4	+59.4	+102.9
ITS (MEP + ATP) Subtotal	46.3	183.6	46.3		−137.3
TOTAL	581.3	675.1	640.7	+59.4	−34.4

[1] Totals for fiscal year 2007 do not include the 50 percent of the pay raise that was included in Public Law 110–5.

The fiscal year 2008 budget was formulated with the fiscal year 2007 President's request as the baseline. Since Public Law 110–5 provides a smaller budget for the NIST core (STRS and CRF) than the fiscal year 2007 President's request by $43.6 million, some proposed initiatives in fiscal year 2007 that will not receive full funding are implicitly contained within the President's fiscal year 2008 request. New initiatives and program increases are described in more detail below:

Scientific and Technical Research Services (STRS)

Enabling Nanotechnology From Discovery to Manufacture (+$6 Million)

The potential market for products containing nanomaterials is estimated at over $1 trillion by 2015. Because of their small size—a thousand times thinner than a human hair—nanoscale products require entirely novel ways to characterize their physical properties and fully exploit their unique characteristics in the manufacture of new products.

In fiscal year 2007, NIST began a major initiative to address the measurement barriers hindering rapid development of nanotechnologies. A new NIST Center for Nanoscale Science and Technology (CNST) has been established that combines both research and a state-of-the-art nanofabrication and nanometrology user facility.

The research initiatives proposed in fiscal year 2008 will build on recent NIST advances by:

—Developing ways to measure strength, stress, strain, optical, and electronic properties of nanostructures to improve processes and understanding of failure mechanisms;

—Creating three-dimensional, high-resolution imaging methods that reveal details of structure, chemical composition, and manufacturing defects and allow researchers to view nanostructures as they interact with their environment;

—Simulating nanoscale phenomena with computer models to allow economical development of production methods for complex nanodevices; and
—Producing the measurement techniques required to address the interagency efforts to characterize nanotechnology impacts to our health, safety, and environment.

Measurements and Standards for the Climate Change Science Program (+$5 Million)

The climate is changing. Determining how fast it is changing, and understanding the complex relationships between all the environmental variables is a critical objective of the U.S. Climate Change Science Program. Many different climate monitoring systems in space, in the air, and on the ground are currently monitoring solar output as well as trapped and reflected heat by the Earth's atmosphere. These systems are operated by many countries and research groups. Establishment of absolute calibration and standard references will allow accurate intercomparisons of these systems, will help identify small environmental changes occurring over many years, and will reduce uncertainties in the data input to global climate change models.

With the proposed fiscal year 2008 funding, NIST will, working in coordination with other agencies, develop:
—An international irradiance measurement scale to be used in rigorously calibrating satellite light intensity instruments prior to launch to ensure sufficient accuracy to allow valid comparisons among results from different instruments or from data sets taken over different periods of time;
—New instrument design strategies and quality assurance programs to optimize accuracy and stability of satellite-based irradiance measurement systems;
—Techniques for generating specific types of aerosols in the laboratory, measuring aerosol optical and physical properties, and for simulating aerosol properties that cannot yet be measured in the laboratory; and
—A database of critically evaluated data on aerosol properties collected at NIST and elsewhere.

Enabling Innovation Through Quantum Science (+$4 Million)

Unlike the laws of physics that govern our "every day" world, the laws of physics that govern the quantum world of atoms, electrons, and light particles are fundamentally different. These quantum particles are able to interact in ways that according to human experience would seem impossible. For example, a quantum particle can actually be in two different places simultaneously.

Conceptualizing these phenomena is difficult to say the least, but developing ways to exploit them for the development of technologically significant innovations is even more challenging. NIST, however, has world-class scientists who are leaders in the emerging field of quantum information science. Three NIST scientists have won Nobel Prizes in the last 10 years based on their work in this field. Many of the best minds in physics today believe that applications of quantum science will transform the 21st century just as integrated circuits and classical electronics revolutionized the 20th century.

The proposed fiscal year 2008 initiative will build upon NIST's significant expertise in this area, and leverage the collaborations established in the recently created Joint Quantum Institute between the University of Maryland, NIST, and the National Security Agency. NIST proposes to accelerate the potential of the quantum world for enhancing our nation's competitiveness through research into:
—Quantum "wires" that use "teleportation" techniques to reliably transport information between the components of a simple quantum computer;
—Quantum memory analogous to the random access memory of today's computers to allow more complex logic operations;
—Quantum conversion processes that transfer information from one form of quantum information to another (for example, ways to transfer information about the quantum characteristics of an atom to a photon); and
—Quantum based measurement tools such as optical clocks and single electron counters.

Disaster Resilient Structures and Communities (+$4 Million)

The past few years have reminded us that both natural hazards—including extreme winds, storm surge, wildland fires, earthquakes, and tsunamis—as well as terrorist actions, are a continuing and significant threat to U.S. communities. The disaster resilience of our physical infrastructure and communities today is determined in large measure by the building codes, standards, and practices used when they were built. Many of these legacy codes, standards, and practices—which have evolved over several decades—are oversimplified and inconsistent with current risk

assessments. As construction and rebuilding costs continue to rise, there is increasing recognition of the need to move from response and recovery to proactively identifying and mitigating hazards that pose the greatest threats.

The proposed fiscal year 2008 initiative will, working in coordination with other agencies, develop:

—Standard methods to predict losses, evaluate disaster resilience, and estimate cost-to-benefit of risk management strategies at the community and regional scales that local officials can use to evaluate and mitigate risks via land-use planning and practices;

—Decision support tools to modernize codes, standards, and practices consistent with the risk;

—A validated "computational wind tunnel" for predicting extreme wind effects on structures; and

—Risk-based storm surge maps for the design of structures in coastal regions.

National Earthquake Hazards Reduction (+$3.25 Million)

Many earthquakes strike without warning. Within the United States, more than 75 million people are located in urban areas considered to be of moderate to high risk of earthquakes. Just the economic value of the physical structures within these regions—not including the potential loss of life and economic disruption—is valued at close to $8.6 trillion. To address this threat Congress has provided longstanding support for the National Earthquake Hazards Reduction Program which NIST coordinates across the Federal government.

This initiative will enhance the safety of:

—New structures by establishing and promoting performance-based standards for entire building designs and by accelerating the adoption of basic research into the model building codes, standards, and practices; and

—Existing structures through research on actual building performance in earthquakes; developing structural performance models and tools; and establishing cost-effective retrofit techniques for existing buildings.

Construction of Research Facilities (CRF)

Building 1 Extension (B1E)—Enabling Sustained Scientific Advancement and Innovation (+$28 Million)

When President Eisenhower dedicated the NIST facilities in Colorado in 1954, no one imagined that half a century later scientists would be manipulating matter atom-by-atom. Such technological advances require increasingly complex and difficult measurements—to be able to observe, characterize, and create structures at ever smaller spatial scales. As the structures shrink in size, small fluctuations in temperature, humidity, air quality, and vibration begin to distort the results. We are now at the point where laboratory conditions are inhibiting further advances in some of the most promising areas of research for the 21st century.

The $28 million proposed in the fiscal year 2008 budget will leverage previously proposed funds ($10.1 million) in the fiscal year 2007 budget to construct state-of-the-art laboratory space that will meet the stringent environmental conditions required for 21st century scientific advances. An additional $38.1 million will be needed in fiscal year 2009 to complete the project. With a total cost of $76.2 million, the Building 1 Extension is the most cost-effective approach to enabling world-class measurement science in support of some of the country's most important economic sectors.

NIST Center for Neutron Research (NCNR) Expansion and Reliability Improvements (+$19 Million)

The NCNR is widely regarded as the most scientifically-productive and cost-effective neutron facility in the United States, and serves more scientists and engineers than all other U.S. facilities combined. Neutron scattering techniques, in which beams of neutrons are used as probes to see the structure and movements of materials at the smallest scales are critical in a wide range of applications that will define the 21st century including nanotechnology, alternative energies, and understanding the structure of biological molecules. Because of the unique properties of neutrons for probing materials and their applications to some of the most advanced technologies, a significant shortage of neutron beam capacity and capability exists in the United States to satisfy the demands of industry and academia.

This initiative begun in fiscal year 2007 is the second-year of a planned 5-year program to expand significantly the capacity and capabilities of the NCNR. The program includes the development of a new neutron cold source together with a new hall to house the guide tube, modernization of the control system, and five new

world-class neutron instruments. The specific fiscal year 2008 funding will complete construction of the new guide hall.

Industrial Technology Services

Hollings Manufacturing Extension Partnership (MEP) ($46.3 Million—No Change from Fiscal Year 2007 President's Request; −$58.3 Million From Public Law 110–5)

The MEP program is a partnership between the Federal Government and local officials to provide assistance to small and medium sized manufacturers around the country. Surveys taken of companies 1 year after receiving MEP assistance indicate a significant financial benefit accrued to the individual company.

The Federal Government is an important partner in the MEP program. Specifically, the Federal Government:

—Develops new services and programs in response to the evolving manufacturing environment and propagates them throughout the network;

—Evaluates and ensures high-quality performance of every member of the network; and

—Ensures that small manufacturers remain the focus of the effort.

The above Federal role can be accomplished within the requested budget. The reduction of Federal funds to the local centers may have to be compensated through a combination of increased fees derived from the benefits accrued by individual companies and cost-savings in the operations of the centers.

Advanced Technology Program (ATP) ($0—No Change From Fiscal Year 2007 President's Request)

No funds for ATP are requested in the President's fiscal year 2008 budget. The fiscal year 2006 enacted budget and the 109th Congress' House mark and Senate Appropriations committee mark were consistent with the phase-out of the ATP program. The last new awards were made in 2004 and sufficient funds were available in the carryover to complete all awards and provide government oversight.

The fiscal year 2007 Continuing Resolution (Public Law 100–5) recently signed by the President included funding for the ATP program. NIST will work with Congress to ensure the funds are executed in the most effective manner to promote U.S. industry's competitiveness.

Summary

Measurements and standards are the bedrock upon which any economy stands. Our founding fathers recognized this. The Constitution assigns the Federal Government responsibility to both issue money and to "fix the standards of weights and measures." The two are actually more similar than they might seem at first glance.

All economic transactions rest fundamentally on trust—trust between two parties that a given amount of something is worth a given amount of something else. Helping to create that trust for innovative new technologies is the common theme that runs through all of NIST's proposed fiscal year 2008 research initiatives. Each helps build a missing or inadequate measurement base—a rigorous, accepted way of quantitatively describing something—that improves confidence in scientific results or improves the quality, reliability or safety of innovative products. Recent NIST measurements and standards research have enabled innovations now embedded in the iPod, body armor currently saving the lives of domestic law enforcement officers and our service men and women overseas, and in diagnostic screening devices for cancer patients making their treatment more targeted and accurate. The results of NIST research can be found in virtually every manufacturing and service industry.

For nearly 106 years, NIST research has been critical to our Nation's current and future competitiveness. The increased funding in the President's fiscal year 2008 budget for the NIST core will directly support technological advances in broad sectors of the economy that will quite literally define the 21st century—as well as improve the safety and quality of life for all our citizens.

U.S. PATENT AND TRADEMARK OFFICE

STATEMENT OF JON W. DUDAS, DIRECTOR

Senator MIKULSKI. Mr. Dudas, why don't we welcome you, and look forward to hear from you and your protecting intellectual property.

Mr. DUDAS. Thank you, Madam Chairwoman.

Thank you ranking member Shelby, and Senator Alexander.

I appreciate this opportunity to share with you the things we're doing at the USPTO, and I also recognize I have a responsibility—and it's even clearer now—a responsibility to the employees of the USPTO to do a better job, not only talking about the challenges we face, but communicating the successes that our employees have had at the USPTO. So, I really do welcome this as an opportunity.

And with that, I think I'll just cut to the chase and say, on behalf of the 8,500 of my colleagues at the USPTO, I'm truly proud to report that the women and the men of the USPTO delivered results in 2006 in, literally, record proportions. Last year, the USPTO set 11 all-time agency-wide records, including the highest quality in the history in trademarks, the second highest quality in history in patents, the highest production in history in both patents and trademarks, the highest hiring of examiners in history, in both patents and trademarks, the highest electronic processing, and electronic filing in history in both patents and trademarks, and allowing more examiners than ever before to work from home. Eighty-five percent of trademark examiners, and 500 new patent examiners were working from home last year.

In 2006, we were also chosen by Business Week magazine as one of the best places in America to launch a career, and we were featured in Business Week magazine as a premier place to round out one's career. One of our examiners, who is 66 years old was featured in Business Week as, again, a place to round out your career.

And USPTO examiners not only succeeded on behalf of the United States on protecting innovation, they succeeded personally and professionally. Sixty percent of all patent examiners, and 70 percent of all trademark examiners exceeded their goals in production and quality, or production or quality, and received an additional bonus for exceeding those goals.

Thanks is owed, first and foremost, to these loyal and determined employees of the USPTO, and in our office hangs a banner, seven stories high, that says, "Celebrating 2006, Our Record-Breaking Year." We held an 8,500 person, all-hands celebration, where senior executives served the rest of our colleagues a thank you lunch, a well-deserved thank you lunch, for breaking those records.

Simply put, these results would not have been possible without this subcommittee allowing all innovators' fees to be used to fund determination of their innovations. The years 2005 and 2006 were the first 2 years in more than 15 years, that the USPTO operated

under full funding, and the difference has been dramatic. Since Congress passed the Government Performance and Results Act to hold Government agencies accountable and report their metrics, and hold them accountable, the USPTO, on average, had only met about 25 percent of their key goals.

Under the Government Performance and Results Act, just last year, after full funding, an appropriate strategic plan, new methods in place, responding to some of the reports you've mentioned, we moved to 90 percent of our goals met. There's one we missed, we should meet it, we should be at 100 percent of our key goals, and our overall goals, we've met 94 percent of.

In 2007, you again provided full funding, and we look forward to working with this subcommittee, to make this a permanent policy.

This subcommittee has helped the USPTO come a long way, but as you point out, there are real challenges that lie ahead. Continuing to attract and retain the finest public servants is a growing challenge. Our employees are at the heart and soul of our intellectual property system, and we need to do everything we can possibly do to ensure they have an environment of respect, and an environment of opportunity.

The Business Week magazine article I talked to before, reported that the most favored employers in the United States—not the average, but the most favored employers in America—are losing about one-third of their new hires within the first 3 years of employment. The USPTO is experiencing similar attrition in the first 3 years. And with the record hiring we have done, that pushes our overall attrition to slightly above what the average has been. That's something we need to, again, focus more on, and I can share with you some of the things we're doing.

The pendency of application also continues to be a challenge. Despite record-level hiring, and record-level production increases in both patents and trademarks last year—19 percent increase in trademarks, and a 17-percent increase in patents, in terms of production—and an already demanding environment for examiners, we continue to receive applications at a record that exceeds our capacity to examine. We've simply broken records in the number of applications we've received for over 20 years now.

The answers there lie, in large part—and I think this is some of what we'll talk to you about in the plan—in asking for more and better information. Not just from our examiners—we recognize that the USPTO owes a whole lot, and that our examiners are the finest in the world—but we need to get more and better information from applicants themselves, and from the public at large. And those are some of the strategies that can increase productivity, and increase production.

To that end, I'd like to share with you that we introduced a system of accelerated examination last year. Under this program, for those applicants—any applicant, any technology, from anywhere—who want quick turnaround, the USPTO now offers a complete examination within 12 months. An applicant can literally reduce their time to 12 months as of August 26, 2006.

In exchange for this quick turnaround, we don't ask for a whole lot more money, but what we ask is that applicants file a complete application. That they give us meaningful and quick turnaround.

That they file electronically, so things can be more efficient. And importantly, they give us search reports and information that will help our examiners become more efficient and more proficient.

The first application to be completed under this program will issue this month, and it will issue in less than 6 months.

Thank you, again, for this opportunity to discuss the progress the USPTO has made, and importantly, the challenges that we still face. I look forward to working with this subcommittee to make the best intellectual property system in the world even better.

Please accept my invitation—if you have an opportunity—to come down and visit the USPTO, an open invitation to any and all of you to meet with the examiners, to share in the success. I can just tell you, anecdotally, the very best ideas we've had have come from opening communication more with employees, the people who are on the ground, doing the work, who have the very best ideas. And I think that's where you'll find the solutions that you're looking for.

Thank you.

PREPARED STATEMENT

Senator MIKULSKI. Thank you very much, Mr. Dudas, and also Dr. Jeffrey.

[The statement follows:]

PREPARED STATEMENT OF JON W. DUDAS

Chairwoman Mikulski, Ranking Member Shelby, and members of the subcommittee: Thank you for this opportunity to appear before you to discuss the United States Patent and Trademark Office's (USPTO) operations, programs and initiatives and the President's fiscal year 2008 budget request to fund those efforts.

I first want to take this opportunity to thank this subcommittee and your colleagues on the House side for ensuring that our current fee schedule remains in effect for fiscal year 2007. We look forward to working with you to make that fee schedule permanent.

We are also pleased that the fiscal year 2008 budget request gives the USPTO full access to the $1.9 billion in fees we expect to collect. This is the fourth consecutive year that the President's budget recommends full access to collected fees, and we appreciate the continued congressional support for that funding level.

Full access to user fees allows the USPTO to continue our successful model of disciplined focus on real measures that enhance quality and increase production, increase hiring and training, promote electronic filing and processing, provide telework opportunities for our employees and improve intellectual property protection and enforcement domestically and abroad.

As we entered the 21st century, the USPTO faced a number of challenges, all of which are well known to the subcommittee. We did not have access to all of our fee collections, our workload in patents was growing at record and unanticipated rates, and there existed the perception that patent examiners did not produce high quality work while management ignored the growing backlog of patent cases and acted to erode employee morale. Indeed, 6 months before I entered the USPTO as the Deputy Under Secretary, this subcommittee had communicated its strong concerns with the agency in its report:

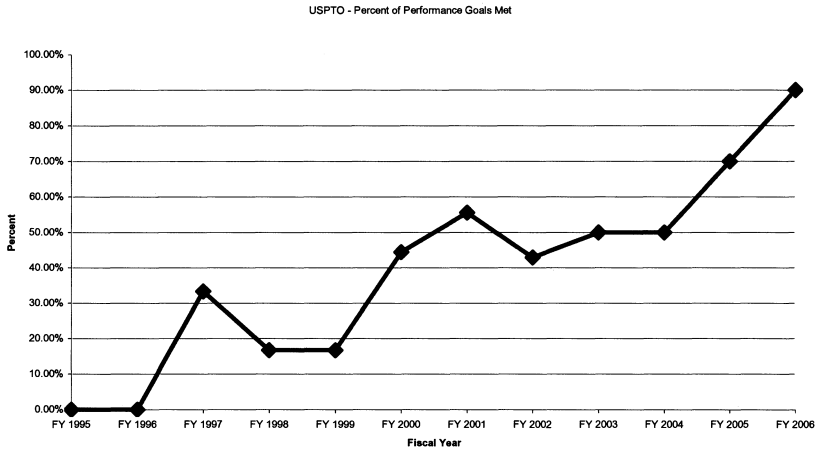
"The ability of the administration to formulate an adequate budget for the PTO is complicated by two factors. First, the agency historically has formulated an incremental budget based on the previous year's budget, and does not provide the committee with a thorough business plan that demonstrates how resources will be used and what results will obtain. Second, PTO management has not been sufficiently innovative. * * * Finally, the committee lacks full confidence in the information provided to it by PTO management regarding its needs and performance." Senate Report 107–42.

This subcommittee's concerns weighed heavily on the USPTO. As Deputy to Under Secretary Rogan, and upon assuming responsibility for the USPTO as Under

Secretary in January 2004, I made commitments to the administration, the Congress, our stakeholders and my dedicated colleagues at the USPTO to address these issues. I made specific promises, namely, that: we would make quality our number one priority; we would control pendency by increasing production; we would "hire more, train better, retain better and telecommute"; we would make patent processing fully electronic; we would protect the U.S. intellectual property system and American interests internationally; and we would reaffirm the USPTO's credibility within the administration and with the Congress.

We made promises, and we have kept those promises. Thus, I am pleased to be able to share with you today the real, measurable successes the USPTO has achieved. The women and men of the USPTO, my colleagues, delivered results in record proportions in fiscal year 2006. Last year, the USPTO set 11 all-time agency records, including: highest quality in history, highest production in history, highest hiring of examiners in history, highest electronic processing and electronic filing in history and allowing for more examiners than ever to work from home-saving them precious time and the rest of us space on the roads. In 2006, we were also chosen by Business Week magazine as one of the best places in America to launch a career. I can further promise you that the men and women of the USPTO will not rest on our accomplishments while we have so many things we still want to achieve.

This subcommittee has made USPTO's recent successes possible. This is our third year operating under the new patent and trademark fee schedule, which provides funding appropriated by the subcommittee. The reliable fee schedule permits us to finance the initiatives—particularly initiatives requiring long-term planning and commitment—so necessary to providing and maintaining reliable, functioning systems. Without your support, we would not be able to function in a business-like manner and achieve these results.



USPTO—Percent of Performance Goals Met Under the Government Performance and Results Act of 1993

Our success has been accomplished in the following manner. We have spent the last 4 years concentrating on meeting or exceeding objective measures, as required by the Government Performance and Results Act of 1993 (See chart above).

This requires continual assessments that identify system-wide process improvements. We use relevant metrics and measures to gauge progress and as early warning of deviations that indicate a need for process adjustment. Our record reflects the hard work and sound decisions of more than 8,000 USPTO employees. We are now seeing the results of their efforts.

Quality

We have focused our attention on improving quality. Public confidence in the quality of our patent grants and trademark registrations is critical. Confidence is earned, and we do not take it for granted. At the USPTO, we believe the essential components of quality are accuracy and consistency. We must ensure that allowed

applications meet both statutory and regulatory standards, thus providing the certainty that enhances competition in the marketplace. We must not allow the need for timeliness to adversely impact the requirement for quality. Last year, despite receiving a record level of patent applications, we achieved the highest patent allowance compliance rate in nearly a quarter century at 96.5 percent. Our trademark organization had a final compliance rate of 96.4 percent—the best rate since we began measuring quality.

Human Resources

In September 2006, Business Week identified the USPTO as one of the best places in America to launch a career. The USPTO has also been lauded by Families magazine as one of the best places in the Washington, DC area to work if you have a family. These results are due in part to the fact that the USPTO seriously addressed the audit findings involving our past human resources practices.

We are now attracting and hiring record numbers of employees—at a rate of 1,200 new patent examiners a year. We started a new, university style approach to training, which allows us to deliver intensive, balanced and long-term training to newly-hired examiners. We now offer bonuses to hire and retain talented engineers and scientists in certain critical fields.

An achievement of which we are also proud is the number of patent examiners who have joined their trademark counterparts in working from home. Our 10 year old Telework program is the gold standard and has proven to be a key quality-of-life benefit for increasing employee morale and retention, and now 500 patent examiners per year have chosen this route.

In 2006, we also had the first ever management conference for all of the USPTO's 800 managers. For 2 days, our managers attended seminars and collaborated on best practices of how to best manage the highly skilled and dedicated workforce at the USPTO. On November 1, 2006, we also held an agency-wide "thank you" event for all of the USPTO's 8,000 plus employees. Senior executives served lunch and thanked our colleagues for making 2006 a record-breaking year. At the management level, we also have started to implement our long-term Strategic Human Capital Plan.

Electronic Government

Our commitment to e-Government has been unequivocal. In March 2006, we unveiled "EFSWeb," the first-ever, user-friendly, Internet-based patent application and document submission system. Since last March, electronic filing of patent applications has skyrocketed from the 1 percent rate of fiscal year 2005, to almost 40 percent filings today. In other words, in less than a year, almost 40 percent of our patent applications are now filed electronically, via the Internet. Last year, 94 percent of trademark applications were filed electronically, and we recently celebrated receipt of electronic trademark application number 1,000,000.

International IP

On the global level, we continue spreading the word about protecting and respecting intellectual property, both domestically and internationally. We are fully engaged in the Bush Administration's Strategy Targeting Organized Piracy (STOP!) in the fight against piracy and counterfeiting around the world. We hold intellectual property awareness conferences, with a focus on small-businesses, all around the country. More than 90 percent of the attendees have rated these programs as good or excellent, and it has been described by at least one participant as "the best use of my taxpayer dollars." Some of our conferences focus exclusively on doing business in China, from an intellectual property perspective.

The USPTO has the lead for the United States in discussions and negotiations to strengthen global intellectual property protection throughout the world. We operate the Global Intellectual Property Academy, which offers intensive patent, trademark, copyright and IP enforcement training for foreign government officials and private-sector representatives from around the world. Finally, we have placed intellectual property experts in Brazil, China, Egypt, India and Thailand, to advocate for improved intellectual property protection that benefits all, including our American businesses.

Production and Productivity

The rate of filing of applications in the United States continues to break records every year. The USPTO's core business continues to grow at a steady pace. In fiscal year 2006 we received 419,760 UPR (utility, plant and reissue) patent applications and expect an increase of 7 percent in fiscal year 2007 followed by an anticipated annual increase of 8 percent in fiscal year 2008 through fiscal year 2012. In the trademarks area, we received 354,775 applications and expect an increase of 6 per-

cent in fiscal year 2007 followed by an 8 percent increase in fiscal year 2008. Trademark applications are anticipated to increase by 7 percent in fiscal year 2009 and increase 6 percent each year from fiscal year 2010 through fiscal year 2012.

This is a strong sign of growing innovation and investment in the United States, but it also represents potential strains on the system. The USPTO has the highest productivity of any major IP office in the world. The USPTO processes and examines more patent applications and more trademark applications than any other office in the world. Based on the latest statistics, the USPTO also has the lowest pendency of any other major office in the world. In addition, 2006 was a record year for production—from 2005 to 2006 production increased 18 percent in trademarks and 16 percent in patents.

Even with the success we have had increasing production and hiring, the volume of patent applications continues to outpace our capacity. Even with 1,200 new hires each year through 2012, pendency, which averages about 31 months now, will be nearly 39 months in 2012. Of course, hiring is critical—without that plan, pendency would be more than 50 months in 2012. However, as this subcommittee has noted, hiring alone is simply not enough. As a result, the USPTO's Strategic Plan released this year places a high emphasis on increasing productivity in the USPTO and in patent systems throughout the world by leveraging the work that is being done in other offices, by applicants themselves and from interested parties in the public.

While increasing productivity, we must take into account the incredible demands placed upon our examiners to issue on the highest quality results in an increasingly demanding world. The inventions for which patent protection is sought are becoming more technically complex. Complex technologies take more time to examine and make up an ever-greater percentage of applications. For the average application, an examiner now has to review 50 percent more claims and 300 percent more background literature. At the same time, the mix of more experienced, more productive examiners to less experienced, less productive examiner varies every year, as does the production loss to train new examiners. For these reasons, patent productivity (the number of patent applications examined per examiner per year) has been steadily decreasing from 101 in 1993 to 78 in 2006.

These are challenges that we can and will overcome. In trademarks, the USPTO increased productivity by 7 percent in fiscal year 2006 after negotiating a new performance plan. Although the trademark examiners union expressed good faith concerns that the vast majority of trademark examiners would fail under increased production and quality requirements, examiners flourished when given this opportunity to succeed—70 percent of trademark examiners earned a production bonus and the number of trademark examiners who received an "Outstanding" or "Commendable" rating grew by nearly 10 percent.

We are adopting a number of strategies in the patents area as well. The USPTO expects to increase productivity in patents by offering examiners more opportunities to determine their workload and achieve higher bonuses. The USPTO is piloting a voluntary flat goals program for patent examiners that builds upon the successful system in trademarks.

We are trying a variety of innovations, including a new offering for the public, called "Accelerated Examination." Under this program, which began August 26, 2006, for those applicants who need or want quick turn around, the USPTO offers a complete examination within 12 months. In exchange for this quick turn around, applicants must file a complete application, agree to telephone interviews and accelerated response periods, must file and prosecute their application electronically and must provide more information about the application to the USPTO in the form of a search and a support document. The first application to be completed under this program was filed on September 29, 2006 and will issue on March 13, 2007 (less than 6 months from date of filing).

While the significant growth in patent and trademark applications indicates that innovation and entrepreneurship are alive and well, it presents our agency with a variety of challenges. We plan to use the following strategies to address these challenges which are included in USPTO's fiscal year 2008 budget request.

Strategy #1: Hiring, Retention

The USPTO hired a record 1,218 patent examiners in 2006, exceeding our hiring goal by more than 200 examiners. The USPTO plans to hire 1,200 patent professionals a year in fiscal year 2007 through fiscal year 2012 for a total of at least 8,400 patent examiner new hires by end of year fiscal year 2012.

Since more experienced examiners naturally are able to review cases faster, and in an excellent manner, the USPTO has implemented a program of recruitment bonuses to hire and retain the talented engineers and scientists we need to examine our increasingly complex applications. We are reviewing other possible programs to

help us compete with industry for professionals in the "hot" technology sectors. We want to be an "employer of choice" to the pool of tech professionals.

Strategy #2: Training

In fiscal year 2006, the USPTO implemented a university approach to training new examiners. The university method provides training to new examiners in a classroom setting for 8 months, rather than using the traditional one-on-one training model. This allows us to deliver intensive training to the new hired examiners, leaving more experienced examiners and supervisors to focus on quality examination. In fiscal year 2006, 123 examiners completed the university's 8-month program. So far in fiscal year 2007, a total of 225 new examiners completed training, with an additional 293 examiners slated to graduate by the end of the fiscal year.

Strategy #3: Quality Initiatives

In fiscal year 2008 and beyond, patents will use a number of strategies to improve quality, such as:

—leveraging the effectiveness of the Patent Training Academy to enhance examiner skills;
—creating chief scientist positions;
—designing and implementing a comprehensive quality system to collect and analyze all quality review information for consistency and to provide feedback and improved training;
—offering a separate quality award that better recognizes the accomplishments of examiners who meet or exceed quality expectations;
—conducting targeted reviews in problem areas which focus on examination processes or functions that show problematic trends; and
—encouraging submissions of prior art by participating with a consortium of patent users, applicants, attorneys, and members of the academic community to build a system to actively solicit prior art.

Trademarks will continue quality improvements by increasing the use of quality review findings, analyzing and incorporating the results in training, examination guidelines, policies and manuals. In addition, trademarks will create comprehensive new employee training programs, and explore the creation of web-based search tools, data mining, and automated preliminary searches so that examining attorneys can search more effectively.

Strategy #4: E-Government

The USPTO promotes electronic filing of applications. In fiscal year 2006, 94 percent percent of trademark applications and 14 percent of patent applications were filed electronically. Trademarks and patent programs estimate that rates of electronic submission of new applications will continue in fiscal year 2007, at 90 percent and 40 percent respectively. In fiscal year 2008, patents expects to receive 50 percent of all patent applications electronically, while trademarks will hold at approximately 90 percent or above of applications filed electronically.

Trademarks is continuing to enhance electronic filing by expanding the number and type of transactions offered on-line and by offering reduced fees to any applicant who files a complete applications using the newer system, the Trademark Electronic Application System-Plus (TEAS-Plus).

Patents implemented the Electronic Filing System-Web (EFS-Web), a user friendly, Internet-based patent application and document submission solution. This system dramatically increased the electronic filing of patent applications from 1.5 percent per month to 33 percent per month at the end of fiscal year 2006. This easy to use system will continue to encourage applicants to file electronically.

Patents is developing the electronic Patent File Wrapper (PFW) as the solution to several business problems. PFW in conjunction with current Patent Automated Information Systems (AIS's) will allow for a fully automated, text-driven patent application processing system.

Strategy #5: Telework

In fiscal year 2006, a pioneer group of 500 patents examiners participated in the newly implemented Patent Hoteling Program (PHP). This voluntary program is designed to comply with congressional direction and build upon the lessons learned from the very successful Trademark Work-at-Home program. The PHP provides patent examiners the ability to work from home with complete on-line access to the USPTO resources. This concept allows participants to reserve time in designated shared "hotel" offices at the Carlyle Campus in Alexandria, Virginia. We plan to add 500 more examiners to the hoteling program in fiscal year 2007. The goal of the hoteling program is to change the boundaries of the old workplace patterns allowing for decreased commute time, greater control over workloads, and even a more bal-

anced lifestyle for our employees. This all translates into increased employee productivity and satisfaction, as well as higher employee retention. On a more long-term basis, we hope to create a workplace that can be anywhere, any time. Patents will also pilot a work-at-home program for technical support staff.

In 2006, Trademark's Work-at-Home program for examining attorneys received the "Telework Program with Maximum Impact on Government Award" from the Telework Exchange. The Trademark Work-at-Home program is considered a "best practice" because of its success in addressing budgetary, space, retention, recruitment, and job satisfaction issues. During 2006, trademarks expanded this program to include 85 percent of all eligible employees.

Strategy #6: International

With substantial congressional support, the USPTO has significantly expanded its efforts to strengthen intellectual property (IP) rights protection globally. As part of the Bush Administration's Strategy Targeting Organized Piracy (STOP!) initiative and the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), the USPTO worked with other U.S. Government agencies to fight piracy and counterfeiting around the world. We collaborate on IP training, advocating progress in IP-related norm-setting bodies (e.g., intergovernmental organizations such as World Intellectual Property Organization (WIPO)), and enforcement efforts with our colleagues in the Departments of Commerce, Justice, and State; the Department of Homeland Security's Customs and Border Protection; the Copyright Office; and the Office of the United States Trade Representative (USTR).

As part of STOP! the USPTO continues a communications campaign to educate small businesses about protecting their IP in the United States and abroad. Small business conferences are offered throughout the country and other USPTO conferences focus exclusively on the IP challenges of doing business in China. The USPTO continues to staff the STOP! Hotline, which lets callers receive information on IP rights and enforcement from our attorneys with regional and subject matter experts. In 2006, the hotline received 1,460 phone calls from people across America with a range of IP questions—an increase of 52 percent over 2005.

To strengthen global IP protection, the USPTO represented the United States in discussions and negotiations at the WIPO throughout 2006. Most notably, the USPTO led a delegation to the WIPO Diplomatic Conference, which culminated in the adoption of the Singapore Treaty on the Law of Trademarks. The new treaty will help trademark owners around the world file applications and renew registrations with fewer formality requirements.

The USPTO has promoted IP protection in China. Through the Joint Commission on Commerce and Trade and its Intellectual Property Rights Working Group, the USPTO and USTR have negotiated commitments from the Chinese Government to reduce counterfeiting and piracy.

The USPTO has established the Global Intellectual Property Academy and has conducted IP rights programs for foreign government officials and private sector representatives around the world. Additionally, we have placed IP experts in Brazil, China, Egypt, India, Thailand, and Geneva to advocate improved IP protection for American businesses and to coordinate training to help stop piracy and counterfeiting abroad.

Strategy #7: Business Continuity/Disaster Recovery

The USPTO Business Continuity Program/Disaster Recovery Program is committed to ensuring protection of USPTO data and systems from damage or unavailability in the event of a disaster or prolonged outage. The USPTO is operating both the patent and trademark production pipelines in a predominantly electronic environment and is dependent on automated systems to support the end-to-end processing of patent and trademark applications. As such, the continuing operations of the USPTO are at an increased risk should catastrophe strike the single data center prior to the full deployment of disaster recovery services. We are undertaking a phased implementation for deploying dual, load balanced data centers that would enable us to protect our mission critical patent and trademark data.

The USPTO's Business Continuity Program completion timeline will occur in five major phases. As part of phase one, in 2007 the USPTO will establish an off-site data "bunker," far enough away from our current data center to prevent a disaster from affecting both sites. Phase two will begin with the establishment of a "warm site" that can be activated in the event of a disaster at the primary data center. Future phases will provide distributed processing, load balancing, and automatic fail over for both core and non-core systems.

Conclusion

Intellectual property rights is a critical aspect of how nations protect and promote innovation and global competitiveness. The United States represents the gold standard for intellectual property protection, and the USPTO is the most productive and most respected intellectual property office in the world. However, because intellectual property protection is so fundamental to our Nation's economic growth, being the best is not enough. We must be perfect. Despite the challenges, we at the USPTO strive to get it perfect, and we look forward to working with the subcommittee to ensure that we do.

Thank you.

PATENT APPLICATIONS AND PENDENCY

Senator MIKULSKI. I have visited NIST, and I've been inspired. I've seen the hydrocarbon car and rode around in it and looked at how you've examined building properties after what happened at the World Trade Center, so not only do we prevent an attack on us again, but that our buildings will be safer and more secure.

Let me now go to patents, and then I'll come back to you, Dr. Jeffrey.

The protection of our intellectual property is an obsession with me. Because if we invent it, and all that goes into it, that's how we're going to compete in the world. My question to you, Mr. Dudas—and thank you for your energetic testimony—how many patents do you receive a year, and what is the nature of the backlog? I understand it's called "pendency."

Mr. DUDAS. Pendency is the amount of time it takes for an application from the time it's filed until the time it's completed, and the backlog is literally the number of applications that are waiting in line.

Senator MIKULSKI. Okay, well, tell me how many do you get?

Mr. DUDAS. Yes, we are now receiving——

Senator MIKULSKI. What is the backlog, and what is the pendency?

Mr. DUDAS. Yes, the number of applications we receive is growing every year, this year we anticipate 440,000 new patent applications—largest in the world—which is a good news in terms of innovation. 440,000 applications, and we're experiencing growth right now of about 8 percent—many countries are wanting to file more, and certainly Americans are filing more.

Senator MIKULSKI. So, we have to be clear that it is not only inventors and entrepreneurs of the United States of America that file with you. But they file with you from around the world.

Mr. DUDAS. Absolutely.

Senator MIKULSKI. And, I understand one of the largest countries is South Korea.

Mr. DUDAS. South Korea is one of the fastest growing countries. It is not right now one of the largest, but it is the fastest growing.

Senator MIKULSKI. But you have 400,000 applicants a year, of pretty techno stuff.

Mr. DUDAS. Absolutely.

Senator MIKULSKI. Okay, and what is the backlog?

Mr. DUDAS. The backlog is 700,000 patent applications waiting in line.

Senator MIKULSKI. And how long is the timeframe?

Mr. DUDAS. The average across the board is 31 months—and it is growing because that backlog is, you know, I just call it "deficit

examining"—more applications coming in, even with record hiring. So 700,000 applications, it's 31.1 months right now, on average—but that's a little misleading, let me tell you, to say "on average" because we have some areas—in the mechanical arts, for instance—maybe relatively simple inventions that are only taking 14 months. That's wonderful, but on the other hand, we have some areas—like the electrical arts—where you see a lot of the high technology, unfortunately where you see the short life cycle, that could take 5 or 6 years. And this is exactly why we are introducing concepts like accelerated examination.

Senator MIKULSKI. Well, then, let me go to these questions. You've read the Government Accountability Office (GAO) report, you're obviously there, and we're glad about the recognition in Business Week. But my concerns relate to ongoing communication.

Mr. DUDAS. Right.

Senator MIKULSKI. And the issues related to improving technical education of staff. You're hiring people that are hot tickets in the marketplace.

Mr. DUDAS. Right.

Senator MIKULSKI. These are intellectual property lawyers, paralegals, support staff—they're hot.

Mr. DUDAS. Right, very.

Senator MIKULSKI. And, in some instances, they also have to have security clearances.

Mr. DUDAS. Right, absolutely.

Senator MIKULSKI. And we understand the dynamic in that.

Mr. DUDAS. Right, they all have to be American citizens, as well.

Senator MIKULSKI. So, could you—one of the things I noted in your prepared remarks that you submitted, that you want to retain, you don't want to keep training the new.

Mr. DUDAS. Right.

PATENT AND TRADEMARK OFFICE RETENTION AND TRAINING

Senator MIKULSKI. And we support that. Could you tell us what you're doing in the area, both of retention, and providing and cracking this whole issue of ongoing technical training. There are people, when I talk to Nobel Prize winners that have worked, who were civil servants, both at NASA and NIST, they said they liked working for the Federal Government because it was mission, it wasn't money, it was purpose. And, they also worked with the best colleagues in the world, and they had the opportunity for their own intellectual expansion. For us, for them to stay fresh, both technically, and fresh in terms of enthusiasm for the job, and a desire to stay.

Could you talk, then, about your retention techniques, and the opportunity for them to get ongoing education.

Mr. DUDAS. Absolutely.

Senator MIKULSKI. And do you need something from us?

Mr. DUDAS. I'll report what you have, and quite honestly, we're looking for guidance from anywhere and everywhere we can get it, but I will tell you that I think we've done a number of things.

First and foremost, what you talked about—what do people want today? They're called the "millennial," I'm not a millennial, the millennial generation, but many of the people we hire today, they care

about Government service, they want to be valued—money matters, but that's not the number one thing that attracts them, and we try to address that, as well.

And you talked about training, and making sure you show value. Of course, we have a challenge, because we are a performance-based organization, people do have to work hard in our office, but there's a number of things that we've done.

First and foremost, we've changed the way we train. Instead of having examiners come in and train for 2 to 3 weeks and then have a mentor approach, we've actually started a Patent Examiner Training Academy, where they come in for 8 months, we give extended-term training, so we can get a greater level of consistency, it allows for more teamwork, it allows for people to get to know the office better, and more consistency. That is something that we needed to do, both because we thought it was a best practice, and because of the amount we were hiring. It turns out it has been a good practice.

Senator MIKULSKI. That's when they come in. What about training for them while they're there? In other words, say they've worked for 3 years, and they want to get refreshed and renewed——

Mr. DUDAS. Yes, absolutely.

Senator MIKULSKI. Both intellectually, and professionally.

Mr. DUDAS. Absolutely.

Senator MIKULSKI They need to know the new stuff and the new bus.

Mr. DUDAS. Absolutely. One of the things we've done, is beef up on allowing examiners to take time and use money to get external training. And we're doing more internal training as well. So, for instance, an examiner can have an opportunity to have their legal degree paid for. If they want to get education outside, they can get a legal degree outside the office and the office will pay for it. In addition to that, any training they want to get that's related to their field, outside the office, PTO will pay up to $10,000.

Last year we had the first-ever managers training conference, where we worked with managers, we got all of the managers out, 2 days away from the office, to talk to them about how they can train better, how they can resolve conflicts better, how they can listen and communicate better with examiners. Now we're also developing the different kinds of training programs we can offer. We already offer several through the office, and through the Federal Government. But, how do we tailor it specifically for those examiners who've been there for a long time?

Another program that we think is very important for retention is teleworking. Five hundred examiners were given the opportunity to work from home last year, and 500 more patent examiners this year. Giving the examiners the opportunity to have the flexibility to determine what they think is the best work environment for themselves. We've found that that has been an incredible boost for morale. Teleworking also gives people more time with their families, but also more time to increase their production, if they want to do that.

Senator MIKULSKI. Well, my time has expired, I will turn to Senator Shelby. But, Dr. Jeffrey, you won't leave without a question from me.

I think that's exciting—no, go ahead, go ahead. Senator Shelby, you go right ahead.

Senator SHELBY. Thank you.

AMERICAN COMPETITIVENESS INITIATIVE

Dr. Jeffrey, I'll start with you, if I could.

The National Institute of Standards and Technology. Last year, we've been talking about, the President announced the American competitiveness initiative—investments are made in federally funded research to ensure that the country has a technologically skilled workforce. The National Institute of Standards and Technology is one agency designated to lead this initiative.

Dr. Jeffrey, how has the American competitiveness initiative improved your portfolio in NIST?

Dr. JEFFREY. Thank you very much, Senator.

The ACI was an absolutely tremendous boost to NIST's ability to do its mission. NIST stimulates innovation and competitiveness through measurements and standards, specifically to help support U.S. industry in terms of their competitiveness, and also improving the quality of life.

The ACI finding will help us in a number of areas. For example, it helps us to accelerate the development and adoption of absolutely groundbreaking, and economically significant technologies. Like, for example, nano-technology, which is estimated to, perhaps, be a $1 trillion industry in 10 years. Also, in support of our energy independence through advancing the hydrogen economy and biofuels work.

It also supports the technical infrastructure that industry needs for the measurements like the work at the NIST Center for Neutron Research (NCNR), and the new NIST Center for Nano-Scale Science Technology. Bottom line is the ACI substantially enhances NIST's capacity and capability to meet our mission.

DISASTER RESILIENT STRUCTURES STUDIES

Senator SHELBY. I'm also pleased to see that the budget request includes an increase of funding for improving disaster-resilient structures in communities. Results from these studies are expected to influence building codes and construction practices along the gulf coast, which need updating to match current risk assessments.

How are you planning to coordinate with gulf coast communities and State agencies to implement any results from this program? As you know, continued construction—costs continue to rise in the gulf coast as a result of rebuilding from the 2005 hurricane. What part of this program explores how safer construction could actually become more cost-effective than current practices? Looking at the whole picture.

Dr. JEFFREY. Thank you, Senator.

We're very excited by the programs and new initiatives that we put in in the 2008 budget. To answer the first question "how we're going to coordinate". After Hurricanes Katrina and Rita, NIST did an assessment—Lessons Learned in the Gulf Coast Region. At that

point we worked very closely with a lot of State and local officials who were responsible for enacting and enforcing the building codes. We have a good working relationship with them, as well as the construction industry down there.

Just like that, we will continue to work with the State and local officials and with the local industry building officials as the results from these new initiatives come forward. We'll also continue to work with the National Building Codes and Standards, to make sure that the lessons get adopted in there.

To answer the second question, which is how do we ensure the cost effectiveness, the whole crux of that program, the whole goal is to find a way of balancing the risk and the cost. So the overall programs focus on exactly that goal. There are actually three ways that we're going to be doing that. One is in the focus on the building codes and standards on the local risk assessment. It matters—whether you're a block away from the ocean, versus 1 mile away from the ocean, and that needs to be included when one looks at the risk assessment, and what the building codes should be.

Second, we're emphasizing performance of the building codes, as opposed to individual components, that way, it's very prescriptive right now. What you want to do is look at the performance in the entire structure.

And last, to really foster the adoption of new construction techniques and materials that are at lower costs, that can help provide greater security and risk assessment.

INTELLECTUAL PROPERTY THEFT

Senator SHELBY. Secretary Dudas, what are you doing at the U.S. Patent and Trademark Office to curb intellectual property theft, and strengthen both domestic and international protection of these rights?

Mr. DUDAS. Thanks for asking that question.

We are working both internationally and domestically. First, while training small businesses in the United States, we came to the conclusion we can't just issue patents and registered trademarks, we need to educate businesses. So, we have seminars throughout the country training small businesses.

First, on intellectual property generally, second on how to do business in China, particularly, because it's such a hot area and there's such a problem there.

INTELLECTUAL PROPERTY LAW ENFORCEMENT

Senator SHELBY. What about enforcement?

Mr. DUDAS. Enforcement, we are not police.

Senator SHELBY. We know that. But you aid in the——

Mr. DUDAS [continuing]. Absolutely. We're the advisors to the rest of the administration on free trade agreements, we work very closely with the Departments of Justice and Customs and Homeland Security, and we are often on the front lines. We place people in China, Brazil, India, Russia, who work with custom officials and others. And we also have a Global Intellectual Property Training Academy where we train hundreds of officials from foreign governments. We bring them here, they're Supreme Court justices, customs officials, and train them here in the United States.

Senator SHELBY. Absolutely. How large of a role does lax enforcement—lax enforcement—of patents and copyrights agreements, internationally play in violating intellectual property rights? In other words, if you don't enforce what you have.

Mr. DUDAS. Right.

Senator SHELBY. Or if you don't try to enforce it, if you're not diligent, you're not on top of things—what do you have, right?

Mr. DUDAS. Right. Lax enforcement, I think, is the number one problem for intellectual property rights. Many nations have put laws into place that might comply, but if you don't enforce them, you have nothing. Sometimes shaking a stick at other nations, and telling them why it's critical, and we do that through a variety of ways—but also, educating their officials in why it's in their interest, as well as the United States.

COST OF INTELLECTUAL PROPERTY THEFT

Senator SHELBY. Well, what's the estimated cost impact in the United States, to the U.S. economy in terms of money and jobs that can be attributed to the theft of U.S. intellectual property?

Mr. DUDAS. We've seen estimates as high as $250 billion.

Senator SHELBY. Say that again, for the record, two hundred——

Mr. DUDAS. $250 billion.

Senator SHELBY. $250 billion of lost money, it's jobs, is it not?

Mr. DUDAS. And the estimates of up to 750,000 jobs just from intellectual property theft.

Senator SHELBY. Do you have the coordination of the other agencies to enforce our copyrights?

Mr. DUDAS. I think we do, and——

Senator SHELBY. Is it working pretty well?

Mr. DUDAS. At the Presidential level, they pull together nine different departments and agencies, targeting organized piracy. We now see the President raising, as he has been for some years, the issue with world leaders, and we've seen real results because of that. The Department of Justice had a copyright takedown in 10 different countries because of international cooperation.

PATENT EXAMINATION QUALITY

Senator SHELBY. The quality of patent examination is central to ensuring that we have strong, enforceable patents, otherwise they challenge, and say there's absolutely nothing to that, you know, that's in the marketplace, everybody knows it. What are you doing to ensure the quality of the patent examination? You talked about the applications with Senator Mikulski, and the backlog, but you know, you don't want to run in and do something too hastily.

Mr. DUDAS. Right.

Senator SHELBY. Because, otherwise you—the quality's not there.

Mr. DUDAS. You're 100 percent right that there is tension between productivity and quality, and we have to be fair to the examiners. I will tell you, our number one goal was to make certain we improved certainty and quality in the system.

The first thing we do is hire the best and the brightest, the most dedicated people.

Senator SHELBY. How do you do that, and compete in the marketplace, this is very important for a governmental agency that we fund to do that?

Mr. DUDAS. Hiring 1,200 examiners has been an incredible challenge, to hire the best and the brightest. We've judged by grade point averages, and where people are coming from. Quite honestly, I think the reason we've been successful in this model, is because we do offer what Senator Mikulski mentioned, which is Government service. You take a constitutional oath to come to our office.

Senator SHELBY. They're not doing it for money.

Mr. DUDAS. They're not doing it for money.

Senator SHELBY. But also, intellectual challenges in there.

Mr. DUDAS. The intellectual challenges in our office are absolutely one huge challenge for us. They do become valuable, because they are so intelligent coming in, and the skills they learn at the Patent and Trademark Office make them valuable in other ways. But, we actually have a team that measures, separate team that measures randomly, quality of examiners, randomly 6 to 18 different cases. We've beefed up that, in terms of how many cases we look at.

Senator SHELBY. You have production goals, but at the same time, it can't just be numbers, it's got to be quality.

Mr. DUDAS. Right, we have production goals and quality goals, and there are no bonuses—you cannot get a bonus until you've met your quality goal. At least met your goal for quality.

Senator SHELBY. The worst thing you could do is allow a patent for something that, isn't, perhaps not patentable, just to meet a goal or a deadline, is that correct?

Mr. DUDAS. You're absolutely right that quality has to be first and foremost. And that's why, probably, the thing we are proudest of is that we drove our error rate down to the lowest it's been in history in trademarks, and second lowest in history of patents.

Senator SHELBY. The chairman has indulged me, if I have one more question, Madam Chairman?

HUMAN CAPITAL MANAGEMENT REVIEWS

Mr. Dudas, over the past 7 years, independent audit in agencies such as Government Accountability Office, OPM and the inspector general have reviewed your office management of human capital. What has been the result of these numerous audits, and do you believe that your agency is aggressively implemented the recommendation of these reviews, can you—and can you provide specific improvements that has shown in the area of human capital management?

Mr. DUDAS. Absolutely.

Senator SHELBY. So much of what you're doing is dealing with people, but people with high intellectual capacity.

Mr. DUDAS. Right. First, to answer your question directly, I am certain that we're aggressively implementing the recommendations in these studies, and I will give you specifics, but I want to point out—I think you're 100 percent right—we have some of the smartest people there are, and they're at the cutting edge of technology. I'm always humbled when I sit down and talk to a Ph.D. in bio-

technology in our office to try to learn something specifically about a case.

And, I will tell you, first and foremost, when we look at the Federal human capital survey, what our employees——

Senator SHELBY. You got a lot of Phi Beta Kappas over there?

Mr. DUDAS. We've got a lot of Phi Beta Kappas, yes.

And when we look to our employees themselves, and look at the results we have—and quite honestly, anecdotally, from me walking around in the gym, and the preschool, and walking around, just talking to examiners—what we do incredibly well is measure. We give people the expectations they need and they believe they're promoted for the right reasons.

What we're not doing well enough, and what we're focused on now, is letting people feel they have creativity and innovation in what they're doing. Because this production environment and the metrics environment is a challenge to that.

And, so we've done a number of things. We've established an Office of Internal Communications, focused only on how we communicate with others. I've called in our management team, we actually changed some of our management team, because we wanted to make certain that we're communicating better, and we wanted to make certain our senior managers did communicate better. So our Commissioners of Patents and Trademarks have brown bag lunches at least every month. Sometimes it's little things, like going to retirement parties, speaking to examiners, 500 or 600 at a time. The Patent Training Academy brings in classes of about 120 examiners at a time. Either I, or the Deputy and the Commissioner will meet with them two or three times, to make certain we're letting them know what's going on. And certainly, most importantly, open to the different questions.

But on the more administrative side, we have a human capital plan that we put in place and the Human Capital Council that we've put in place. The question is, what are the results? So, certainly, long term, I think administratively we've made a big difference. I will tell you some of the results, I think, we've gotten this year.

Being able to hire 1,200 examiners, and have a high-quality class is something that, quite honestly, we were intimidated by, because a number of Senators, a number of Members said, "You simply can't do it." Our original goal was 750, and then we did 875, and then we raised the goal to 1,000, and we did 1,219. And now we feel comfortable and confident that we can do this with 1,200 folks. So, I think, just having an operation that can hire 25 percent of your workforce every year is a testament to what our human capital plan has put in place so far.

Although money is not the most important thing, we recognize we need to be competitive. We were able to get both retention and recruitment bonuses adopted through the Office of Personnel Management, as well as an across-the-board pay raise of 7 percent for all patent examiners, both in the same year, to say, "Listen, we have to be able to recruit on this basis."

RELATIONSHIP WITH FOOD AND DRUG ADMINISTRATION

Senator SHELBY. What kind of relationship do you have with the Federal Drug Administration?

Mr. DUDAS. Food and Drug Administration?

Senator SHELBY. Food and Drug——

Mr. DUDAS. It's more administrative than anything else. Our policy folks get together and talk, but certainly we have an administrative relationship in that certain pharmaceutical and agricultural products——

Senator SHELBY. Right.

Mr. DUDAS. Have an administrative way of getting a term extension. It's mostly a ministerial task at the Patent and Trademark Office.

Senator SHELBY. Because they patent.

Mr. DUDAS. What happens is that the Food and Drug Administration or Agriculture has to approve a certain product, so they're not allowed to get to the market——

Senator SHELBY. Absolutely, it's safety.

Mr. DUDAS. Yeah, exactly, the Hatch-Waxman law allows for some extensions. So, we have a relationship in that we communicate with them, so we understand——

Senator SHELBY. Sure.

Mr. DUDAS. But, really it's more administrative.

Senator SHELBY. Okay.

Thank you for your indulgence, Madam Chairman.

Senator MIKULSKI. Well, Senator Shelby, those were excellent questions, and certainly reflect my own thinking.

I just wanted to close the loop for the purposes of this hearing on the patent issue. I think what we're saying is, that what we want is the PTO to really function in the way I think you and we would like it to be. There have been a series of issues that have been raised, and there are numerous reports, and that you have raised internally. We know that there's been legislation that took the PTO from kind of a 1950's Government thinking—when Rubric's quoting in 50's and 60's technology—to a performance-based agency in a new world order. Not only a new economy. And, therefore, we're very conscious in performance-base with benchmarks, and metrics, these things are important.

All of this is important, but ultimately, it's those employees who feel that they are on solid ground, and they want to either make it a career, or they want to make it a long enough of a career to make what we invest in them worthwhile. That's really our question. Because we know, in the marketplace, they'll move out. But you will always need a cadre of civil servants that are there. So, this is why we'll come back to you in terms of what I raise with both Secretary Dudas and Gutierrez, you've heard what we've raised, no surprises, and no spring hazing—we wanted that remediation plan. So, let's get this remediation plan. You know what the challenges are, and what we think we can do this year, and what we can do subsequently.

We're also aware of the international challenges—not only the number of countries that are applying and—because they want our

intellectual property so they can come into our market. We're the gold standard. You are, like FDA, the gold standard.

And, what we're very impressed by the National Intellectual Property Law Enforcement Coordinating Council. I've read their most recent report, and Senator Shelby, I know you've traveled the world on security matters, both as intel chair, and actually of this subcommittee, which—you get high marks for training Government officials in other countries to enforcement issues, educating foreign publics about intellectual property, the group called STOP.

So, that's a whole other area we could follow up on. But, we want to be sure, as we go ahead in this year's appropriation, you can meet some of those international challenges, as well as being flooded with patents. So, we're going to come back to you.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY FUNDING INCREASE FOR AMERICAN COMPETITIVENESS INITIATIVE

But, Dr. Jeffrey, let me go over to you, I mean, we're very impressed that the President's budget increased funding for NIST, particularly in the laboratory and some construction accounts, however we're concerned that it was paid for out of ATP and the manufacturing extension program.

But, if we could come back to you being in the competitiveness agenda—what do you think are the three kinds of most robust things that you want to do with this new money, and is this—does it go to the horizon, or does it take us over the horizon? And also, looking at both innovation and then, to the extent that you can testify publicly, its link to security?

Dr. JEFFREY. Absolutely. The three overriding things that we need to do at NIST to ensure that we're providing the support in industry and academia that we need to do, is one, we need to absolutely ensure that our basic core competencies are strong, and that we're meeting the needs of industry today, and as we look forward to the future. And there's a number of areas that some of the funding under ACI is going in to strengthen.

It's no secret that the NIST funding has—over the last, essentially, two decades, not really kept pace with the needs that were arising. And so we've eaten into our seed corn. This, now, fixes that.

Second, we need to look at was the future to those areas that are going to be absolutely critical for industry and universities. Nanotechnology is a great example. That's going to be an incredible disruptive and important economic impact. It's estimated that up to 15 percent of all manufactured goods in 10 years is going to include nano-technology. We need to be there and ready for them.

And the third area is that we have to ensure that we have the facilities capabilities to make these kind of measurements. And that also, if I could almost follow on to the last of the questioning, is critical to being able to attract and retain the best and the brightest scientists. They have to be able to have the kinds of facilities necessary to do the job, and that's why you also see an important component on the facilities, and in our budget.

CENTER FOR NANO-SCALE SCIENCE TECHNOLOGY

Senator MIKULSKI. Well, we appreciate that, and if I could go right to nano-technology in a question.

As I understand it, this is $6 million for enabling nano-tech from discovery to manufacturer. At this center, do you, have you developed an operating business plan for moving ahead with this, because there's some question about the user facility.

Dr. JEFFREY. Absolutely, the Center for Nano-Scale Science Technology is sort of a two-pronged program. One is, as a national user facility, and the other is as a research facility. That was created in the 2007 President's budget and is now being expanded in 2008. We are in the process of completing all of policy documents and all of the business models for that. I was, quite frankly, slowed down a bit because of the continuing resolution, until that was resolved, and thanks to a lot of the support of the people here and on the House side, we've had sufficient funding in the continuing resolution to now move forward.

So, we expect to have all of the documents done, and open for business, essentially, May of this year.

SAFETY OF NANO-TECHNOLOGY

Senator MIKULSKI. Well, that sounds good. One last question about nano-tech.

One of the issues that is raised is, that—is nano-tech safe? Because they're such mini-, micro-particles, I don't even have—they're nano-particles, which means they're sub-mini-micro-particles. But there's a lot of question, as you know, about the safety of them. Is part of your ongoing research and standards is, the flashing yellow lights around the impact of health, the part of the NIST effort?

Dr. JEFFREY. Excellent question, Senator.

NIST is taking very seriously the issues of safety in nano-technology. And we're working with other agencies to make sure that we have good answers for the general public, because the worst thing that can happen is, either an actual environmental——

Senator MIKULSKI. But are you doing it?

Dr. JEFFREY. The role that NIST plays is on the measurements and characterization of the nano-technology that gets, that one can then determine the health impacts.

I'll give you an example, a concrete example. Carbon nano-tubes, which are one of the essential building blocks of nano-technology—we received a sample of carbon nano-tubes from industry to characterize it. We found that 60 percent—six-zero percent—of the atoms were not carbon, they were heavy metals.

Senator MIKULSKI. Oh, gosh.

Dr. JEFFREY. There were catalysts that were used, thereby contaminating the sample. So, when one, then goes to NIH or others to look at the toxicity, are you measuring the toxicity of the carbon nano-tube? Or the toxicity of the heavy metals?

So, NIST is working very closely to characterize materials, to purify the materials, to ensure that we've got the measurements that we can then apply, working closely, and we are working closely and collaboratively with NIH, with FDA and with others, to have that

collusive approach. We provide the measurements characterizations, they supply the medical implications.

Senator MIKULSKI. That's fantastic.

We also are very heartened by the fact that you are one of the lead agencies in dealing with the climate crisis, when measurements and standards for climate change science, as well as the practical things like the national earthquake hazard reduction program.

EFFECTIVENESS OF MANUFACTURING EXTENSION PARTNERSHIP

We won't go into that now, but here's the question—you hear our colleagues here raising questions about manufacturing extension. And then you've also heard on the floor, challenges to ATP, is it corporate welfare, whose time has come and gone. What are your comments about ATP and MEP? We're going to be on pressure from one group of Senators who want to save ATP and another group of Senators who want to tank it. And then, of course, there's enthusiastic support for MEP. And, I think, well-warranted—the support is not, again, it's not about pork, but in their community it's been, it's brought the beef.

Dr. JEFFREY. Thank you. Let me take the last part first, on MEP, as the Secretary testified to, the administration recognizes the effectiveness of MEP, it is an effective program, it's been measured and rated by OMB as an effective program. The issue is one of prioritizations in the tight budget climate. Our core competencies and concentration is on the measurements and standards that impact entire industries, and opposed to individual companies one at a time. And, in a tough budget climate, those prioritizations had to be made.

On ATP, there is a lot of disagreement as to where the appropriate role is for the Federal Government to be investing. One thing, I think, is fairly clear, though, is that there is friction between the basic scientific discoveries, and when it ends up in the marketplace.

And, there are a number of different ways that one can look at trying to minimize that friction, and make it easier to increase the efficiency by which a scientific discovery is able to get commercialized. And I think we need to be open in looking at all sorts of different models and policy options to try to help and make that the most efficient. Because, the faster we can get those discoveries to market, the better the advantage we will have in the global economy.

Senator MIKULSKI. Well, that's exactly right, and you're working to develop those standards and so on, and that's the heart and soul of a patent process—not only what is it and what does it do, but how do you kind of measure it, or certain metrics, not only measurement, to identify it, et cetera.

Well, our time is really up.

Senator SHELBY. I just wanted to——

Senator MIKULSKI. Yes, we could go on all day, and I hope one day to visit you, and of course, visit you, Dr. Jeffrey, and perhaps we could go together, but Senator Shelby?

Senator SHELBY. I would like to go sometime, and I don't know if I'd understand everything they were doing, but I'd be fascinated.

Senator MIKULSKI. Me too.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY'S COLLABORATION WITH INDUSTRY

Senator SHELBY. Dr. Jeffrey, in your testimony, you mentioned the recent advancements, I'm picking up on Senator—in nano-technology, and how your agency is developing a method for testing the quality of nano-tube material.

Besides testing the tubes, what other ways does NIST plan to interact with the industry? Particularly, with the manufacturing of more efficient fuel cells, and creating baseline standards for the use of nano-particles within the medical industry.

Dr. JEFFREY. Thank you very much. There's a number of different areas where we've been reaching out to industry. One of the beauties of NIST, which is almost unique among the Federal Science and Technology Enterprise, is the close collaboration that we have with industry. Where they are not just customers, they are partners.

I believe Secretary Gutierrez made a reference that we have about 1,500 technical Government employees, but we have about 2,800 technical private sector people from industry and academia, literally coming to the NIST campus and working side by side, so it's a very close collaboration.

In terms of some of the specifics, I'll give this as an example. We actually just completed a study, it's called An Assessment of the U.S. Measurement System, where we actually looked at——

Senator SHELBY. What are the results of the study?

Dr. JEFFREY. Well, the results are that we're trying to identify measurement barriers to innovation. This is to help us in our strategic planning process, as well as to reach out to other parts of the Federal Government, where they have measurement needs. We identified 723 measurement barriers to innovation that were in 11 different industry sectors—including ones that you described. One of the things that we're now doing, now that we have—this is the first cut—it's fascinating reading, sir, we'll be glad to provide copies. But one of the things that we're now doing is, essentially, a deep dive into this, and looking at—as opposed to 723 separate measurement needs, are there systemic issues that we can attack that would be the highest priority that we can then, really make the biggest difference on.

And, so we're working very closely with the universities and I'm very proud to say we hosted a set of universities from Alabama up on the NIST campus, specifically looking at some of the health impacts on the new technology, and looking broadly at reaching out and forming partnerships. I was very impressed with what I saw.

Senator SHELBY. This is very promising. It's a different field from anybody could imagine other than the lab 25 years ago, is that right?

Dr. JEFFREY. Absolutely. This is an entirely new area. One of the things to put this into perspective, when we talk about nano-technology, and mini-micro and going all the way down. We have a beautiful picture that we captured of a carbon nano-tube, again, it's sort of a basic building block—on the hair of the leg of an ant.

Senator SHELBY. It's so small, it's hard for us to imagine, isn't it?

Dr. JEFFREY. Yeah, absolutely.

Senator SHELBY. We talked about miniaturization of everything, but then, this has gone a quantum leap, has it not?

Dr. JEFFREY. Absolutely. We are literally talking about a few atoms. It's really where the action is occurring.

Senator SHELBY. Thank you, Madam Chairman.

Senator MIKULSKI. Well, thank you. And, we want to thank our panelists, and I think this has been a very, a very robust hearing. And we've gotten the subcommittee off to a good start, we thank you for your service, and we look forward to working with you now, as we go through the appropriation process.

ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions, Senators may submit additional questions for the subcommittee's official record. We request the Department's responses in 30 days.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

DEPARTMENTAL MANAGEMENT WCF AND A&R

Question. Please provide the WCF bill breakout (including the A&R) by bureaus for fiscal year 2001–2007. Also provide the estimated WCF bill (including A&R) for each of the bureaus in the fiscal year 2008 request.

Answer. The requested information follows.

ATTACHMENT 1.—ADVANCES & REIMBURSEMENTS SUMMARY BY BUREAU

[In thousands of dollars]

Bureau	Fiscal year—							
	2001	2002	2003	2004	2005	2006	2007 estimate	2008 estimate
OFFICE OF THE SECRETARY—SALARIES & EXPENSES	4,201	4,333	3,873	2,690	5,094	4,306	4,820	4,931
INTERNATIONAL TRADE ADMINISTRATION	15,351	15,202	15,454	12,901	13,910	12,510	13,319	13,622
ECONOMIC DEVELOPMENT ADMINISTRATION	1,376	1,411	1,370	1,230	1,298	1,372	1,613	1,647
NATIONAL TELECOMMUNICATIONS AND INFO ADMIN	2,608	2,650	2,579	2,027	2,431	2,387	2,582	2,641
NATIONAL TECHNICAL INFORMATION SERVICE	282	32	76	211	85	129	143	145
BUREAU OF THE CENSUS	1,703	2,261	1,367	1,540	1,503	3,210	4,873	4,956
ECONOMIC AND STATISTICAL ANALYSIS	1,109	1,135	1,128	901	1,195	882	1,058	1,081
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	4,805	4,047	3,810	4,062	3,938	5,420	7,155	7,290
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY	1,042	825	778	988	910	1,002	1,451	1,476
MINORITY BUSINESS DEVELOPMENT AGENCY	786	797	849	602	709	703	777	795
BUREAU OF INDUSTRY AND SECURITY	3,643	3,735	3,662	3,061	3,487	3,243	3,550	3,630
TECHNOLOGY ADMINISTRATION	929	937	932	775	660	423	277	283
OFFICE OF INSPECTOR GENERAL	1,350	1,373	1,126	999	1,163	1,130	1,142	1,169
OFFICE OF COMPUTER SERVICES	419	425	309	266	269	268	276	282
OFFICE OF THE SECRETARY—WORKING CAPITAL FUND	6,813	7,076	6,813	5,338	6,066	5,661	5,918	6,057
SUBTOTAL BY BUREAU	46,417	46,239	44,126	37,591	42,718	42,646	48,954	50,005
PATENT AND TRADEMARK OFFICE	1,248	1,107	825	1,133	1,135	2,517	2,610	2,655
TOTAL A&R	47,665	47,346	44,951	38,724	43,853	45,163	51,564	52,660

NOTE: Fiscal years 2001–2002 represents the operating plan for the year.

ATTACHMENT 1A.—WORKING CAPITAL FUND BILLINGS SUMMARY BY BUREAU

[In thousands of dollars]

Bureau	Fiscal year—							
	2001 actuals	2002 actuals	2003 actuals	2004 actuals	2005 actuals	2006 actuals	2007 operating plan	2008 estimate
OFFICE OF THE SECRETARY	6,810	6,419	6,873	7,966	8,906	8,551	10,142	10,923

INTERNATIONAL TRADE ADMINISTRATION	16,997	18,905	20,673	24,356	26,886	27,688	29,801	31,306
ECONOMIC DEVELOPMENT ADMINISTRATION	1,193	1,409	1,419	2,029	1,983	2,519	2,161	2,582
NATIONAL TELECOMMUNICATIONS AND INFO ADMIN	2,385	2,456	2,629	3,188	3,294	3,346	3,643	4,153
NATIONAL TECHNICAL INFORMATION SERVICE	407	554	556	516	515	461	487	563
BUREAU OF THE CENSUS	22,073	20,609	21,712	21,345	23,249	23,263	22,601	25,531
ECONOMIC AND STATISTICAL ANALYSIS	1,779	2,140	2,127	2,215	2,542	2,608	2,564	3,058
NATIONAL OCEANIC AND ATMOSPHERIC ADMIN	29,680	31,270	32,712	36,164	39,546	33,306	36,206	35,165
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY	7,482	9,317	9,858	9,798	10,527	9,616	9,339	11,496
MINORITY BUSINESS DEVELOPMENT AGENCY	1,213	1,203	1,439	1,468	2,024	1,866	1,928	2,384
BUREAU OF INDUSTRY AND SECURITY	4,578	4,827	5,628	6,725	6,797	7,223	7,604	8,717
TECHNOLOGY ADMINISTRATION	630	665	552	900	939	724	613	1,100
OFFICE OF INSPECTOR GENERAL	967	1,057	1,054	1,359	1,531	1,621	1,700	1,874
OFFICE OF COMPUTER SERVICES	261	355	266	326	274	231	245	331
SUBTOTAL BY BUREAU	96,455	101,186	107,498	118,355	129,013	123,023	129,034	139,183
PATENT AND TRADEMARK OFFICE	6,052	3,559	3,015	2,964	2,808	3,507	2,929	2,555
OTHER AGENCIES [1]	8,593	8,762	9,666	1,067	997	714	517	1,086
TOTAL	111,100	113,507	120,179	122,386	132,818	127,244	132,480	142,824

[1] DOC Federal Credit Union, White House Visitor Center, National Aquarium, National Indian Gaming Comm. and FAA.

Question. Please provide a breakout of ATBs (adjustments to base) by bureau for WCF payments, any E-Government initiatives and for the Commerce Business System.

Answer. The requested information follows.

ATTACHMENT 2.—DEPARTMENTAL MANAGEMENT—WORKING CAPITAL FUND FISCAL YEAR 2008 BUDGET SUBMISSION—ATBS & PROGRAM INCREASES BY BUREAU

[In thousands of dollars]

	CSRS	FERS	TSP	FICA	WIGS PAY BAND	GSA RENT	PRINTING	HEALTH	GPL ADJ	PER DIEM	COMP DAY	POSTG
O/S	−4	7	2	7	.....	32	1	23	72	1	53	2
ITA	−8	13	2	13	.....	64	1	47	177	11	105	2
EDA	−1	1	.....	1	.....	6	.....	4	14	.....	10	.....
NTIA	−1	1	.....	1	.....	8	.....	4	27	.....	11	.....
NTIS	.....	.....	.....	.....	.....	.....	.....	1	3	.....	2	.....
CENSUS	−7	11	2	10	.....	38	1	38	136	4	87	.....
ESA/BEA	−1	1	.....	1	.....	6	.....	4	13	.....	10	.....
NOAA	−10	16	3	15	.....	63	2	56	183	8	131	1
NIST	−3	5	1	5	.....	16	1	18	40	2	43	.....
PTO	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
MBDA	−1	1	.....	1	.....	4	.....	3	9	.....	8	.....
BIS	−2	4	1	3	.....	18	.....	12	34	1	29	.....
TA	.....	.....	.....	.....	.....	2	.....	1	6	.....	3	.....
OS—IG	.....	1	.....	1	.....	4	.....	2	14	.....	4	.....
OCS	.....	.....	.....	.....	.....	1	.....	1	3	.....	3	.....
OTHER	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
LESS ABSORBED	−38	61	11	58	.....	262	6	214	731	27	499	5
TOTAL	−38	61	11	58	.....	262	6	214	731	27	499	5

ATTACHMENT 2.—DEPARTMENTAL MANAGEMENT—WORKING CAPITAL FUND FISCAL YEAR 2008 BUDGET SUBMISSION—ATBS & PROGRAM INCREASES BY BUREAU—CONTINUED

[In thousands of dollars]

	EMP COMP	CBS DE-CREASE	STEAM	PEPCO ELECTRIC	SUBTOTAL GENERAL ATBS	2008 PAY RAISE	2007 PAY RAISE	TOTAL WCF ATB	PROGRAM INCREASE	TOTAL TO BUREAUS
O/S	.....	−8	41	97	326	156	39	521	.....	521
ITA	.....	−48	138	329	846	302	75	1,223	.....	1,223
EDA	.....	−6	13	30	72	30	7	109	.....	109
NTIA	.....	−4	27	64	138	31	8	177	.....	177
NTIS	.....	−8	.....	.....	−2	5	1	4	.....	4

ATTACHMENT 2.—DEPARTMENTAL MANAGEMENT—WORKING CAPITAL FUND FISCAL YEAR 2008 BUDGET SUBMISSION—ATBS & PROGRAM INCREASES BY BUREAU—CONTINUED—Continued

[In thousands of dollars]

	EMP COMP	CBS DECREASE	STEAM	PEPCO ELECTRIC	SUBTOTAL GENERAL ATBS	2008 PAY RAISE	2007 PAY RAISE	TOTAL WCF ATB	PROGRAM INCREASE	TOTAL TO BUREAUS
CENSUS	.....	−160	.....	.....	160	250	62	472	.....	472
ESA/BEA	.....	−10	10	23	57	30	7	94	.....	94
NOAA	.....	−278	23	54	267	379	94	740	.....	740
NIST	.....	−70	1	2	61	123	30	214	.....	214
PTO	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
MBDA	.....	−3	7	18	47	23	6	76	.....	76
BIS	.....	−8	37	89	218	83	21	322	.....	322
TA	.....	−1	7	17	35	7	2	44	.....	44
OS—IG	.....	−4	13	33	68	13	3	84	.....	84
OCS	.....	.....	.....	.....	8	7	2	17	.....	17
OTHER	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
LESS ABSORBED	.....	−608	317	756	2,301	1,439	357	4,097	.....	4,097
TOTAL	.....	−608	317	756	2,301	1,439	357	4,097	.....	4,097

Question. Please provide a complete cost breakout for the development of CAMS/CBS by fiscal year since inception. Cost should capture: all contract costs; all Commerce staff assigned to central coordinating offices; all detailed staff from bureaus to central office; all staff costs for staff that primarily worked on CAMS/CBS.

Answer. Attachment 3 provides a complete cost breakout for the development of the Commerce Administrative Management System/Commerce Business System (CAMS/CBS) from fiscal year 1999 to 2003. Upon full bureau implementation at the end of fiscal year 2003, CAMS/CBS has been in operational maintenance and support status.

ATTACHMENT 3.—CAMS/CBS COSTS

[In thousands of dollars]

	Fiscal Years—													
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Fiscal Year Total	27,275	33,465	41,952	46,195	36,469	35,221	34,729	35,967	38,125	38,638	39,313	39,986	40,655	40,100
Labor	23,195	28,620	36,000	39,731	31,123	30,030	29,480	30,393	31,335	31,385	31,980	32,557	33,048	32,341
Government	9,561	11,731	12,009	12,354	12,784	12,346	12,474	12,814	13,238	16,281	17,418	17,895	18,110	18,320
Contractor	13,634	16,889	23,991	27,377	18,339	17,684	17,006	17,579	18,097	15,104	14,562	14,662	14,938	14,021
Other Costs	4,080	4,845	5,952	6,464	5,346	5,191	5,249	5,574	6,790	7,253	7,333	7,429	7,607	7,759

Note: No staff were detailed from the bureaus to the central office.

Question. Please provide any estimated out-year costs associated with CAMS/CBS development.

Answer. Since fiscal year 2004, CAMS/CBS development costs have been for technical migrations to keep current with Oracle forms and database applications to ensure information technology audit compliancy. There have been no application functionality developments except in non-compliance situations when dictated by new and/or changes in Federal policy or regulations.

Question. Please provide the latest FAIR Act inventory along with the status of any on-going or planned A–76 competitions.

Answer. The Department of Commerce has initiated a streamlined competitive sourcing competition for their Office of Photographic Services. A decision is expected to be announced by the Department by April 2007. No additional competitions are planned at this stage. The last OMB-approved inventory (fiscal year 2005) is attachment 4. We expect to have our fiscal year 2006 inventory approved and released by OMB in the next few weeks and will notify Congress at that time. There has been no substantial change between the 2005 and 2006 inventories.

The link to the website is: http://oamweb.osec.doc.gov/CS__doc__inventories.html

ATTACHMENT 4

Seq. No.	Agency/Bureau	Department/Agency/Bureau Title	Total CY FTEs	Dir CY FTEs	Reim CY FTEs
		Department of Agriculture:			
05060003	005–03	Office of the Secretary	87	87	.....
05060004	005–04	Executive Operations	3,376	390	2,986
05060005	005–07	Office of Civil Rights	191	181	10
05060006	005–05	Departmental Administration	394	327	67
05060007	005–06	Office of Communications	90	90	.....
05060008	005–08	Office of the Inspector General	721	721	.....
05060010	005–10	Office of the General Counsel	330	321	9
05060013	005–13	Economic Research Service	455	452	3
05060015	005–15	National Agricultural Statistics Service	1,366	1,260	106
05060018	005–18	Agricultural Research Service	8,794	8,598	196
05060020	005–20	Cooperative State Research, Education, and Extension Service	451	442	9
05060032	005–32	Animal and Plant Health Inspection Service	6,761	5,928	833
05060035	005–35	Food Safety and Inspection Service	9,761	9,525	236
05060037	005–37	Grain Inspection, Packers and Stockyards Administration	725	338	387
05060045	005–45	Agricultural Marketing Service	3,455	2,344	1,111
05060047	005–47	Risk Management Agency	568	568	.....
05060049	005–49	Farm Service Agency	5,498	2,134	3,364
05060053	005–53	Natural Resources Conservation Service	13,627	12,488	1,139
05060055	005–55	Rural Development	6,872	1,686	5,186
05060068	005–68	Foreign Agricultural Service	1,002	812	190
05060084	005–84	Food and Nutrition Service	1,488	1,488	.....
05060096	005–96	Forest Service	37,298	35,414	1,884
050600ZZ		Total, Department of Agriculture	103,310	85,594	17,716
		Department of Commerce:			
05061005	006–05	Departmental Management	1,134	363	771
05061006	006–06	Economic Development Administration	247	240	7
05061008	006–07	Bureau of the Census	9,401	6,659	2,742
05061009	006–08	Economic and Statistical Analysis	552	525	27
05061025	006–25	International Trade Administration	2,602	2,553	49
05061030	006–30	Bureau of Industry and Security	418	414	4
05061040	006–40	Minority Business Development Agency	115	115	.....
05061048	006–48	National Oceanic and Atmospheric Administration	12,634	11,769	865
05061051	006–51	U.S. Patent and Trademark Office	7,198	.....	7,198

05061053	006–53	Technology Administration	31	30	1
05061054	006–54	National Technical Information Service	200	.....	200
05061055	006–55	National Institute of Standards and Technology	3,028	2,334	694
05061060	006–60	National Telecommunications and Information Administration	295	128	167
050610ZZ		Total, Department of Commerce	37,855	25,130	12,725
		Department of Defense—Military:			
05062010	007–10	Operation and Maintenance	433,191	353,892	79,299
05062020	007–20	Research, Development, Test, and Evaluation	26,823	14,717	12,106
05062025	007–25	Military Construction	7,893	1,962	5,931
05062030	007–30	Family Housing	2,030	2,021	9
05062040	007–40	Revolving and Management Funds	189,952	.....	189,952
050620ZZ		Total, Department of Defense—Military	659,889	372,592	287,297
		Department of Education:			
05072030	018–30	Office of Vocational and Adult Education	20	20	.....
05072040	018–40	Office of Postsecondary Education	5	5	.....
05072045	018–45	Federal Student Aid	1,140	1,140	.....
05072050	018–50	Institute of Education Sciences	16	16	.....
05072080	018–80	Departmental Management	3,273	3,273	.....
050720ZZ		Total, Department of Education	4,454	4,454	.....
		Department of Energy:			
05073005	019–05	National Nuclear Security Administration	2,543	2,543	.....
05073010	019–10	Environmental and Other Defense Activities	2,566	2,566	.....
05073020	019–20	Energy Programs	4,660	3,373	1,287
05073050	019–50	Power Marketing Administration	4,711	1,264	3,447
05073060	019–60	Departmental Administration	1,442	1,442	.....
050730ZZ		Total, Department of Energy	15,922	11,188	4,734
		Department of Health and Human Services:			
05074010	009–10	Food and Drug Administration	9,696	7,957	1,739
05074015	009–15	Health Resources and Services Administration	1,590	1,445	145
05074017	009–17	Indian Health Services	13,950	8,909	5,041
05074020	009–20	Centers for Disease Control and Prevention	7,917	6,683	1,234
05074025	009–25	National Institutes of Health	17,106	11,875	5,231

ATTACHMENT 4—Continued

Seq. No.	Agency/Bureau	Department/Agency/Bureau Title	Total CY FTEs	Dir CY FTEs	Reim CY FTEs
05074030	009–30	Substance Abuse and Mental Health Services Administration	508	466	42
05074033	009–33	Agency for Healthcare Research and Quality	286	.....	286
05074038	009–38	Centers for Medicare and Medicaid Services	4,852	4,780	72
05074070	009–70	Administration for Children and Families	1,382	1,382	.....
05074075	009–75	Administration on Aging	126	119	7
05074090	009–90	Departmental Management	1,896	1,400	496
05074091	009–91	Program Support Center	1,491	37	1,454
05074092	009–92	Office of the Inspector General	1,506	278	1,228
050740ZZ		Total, Department of Health and Human Services	62,306	45,331	16,975
		Department of Homeland Security:			
05074510	024–10	Departmental Management	905	903	2
05074520	024–20	Office of the Inspector General	502	502	.....
05074530	024–30	Citizenship and Immigration Services	10,052	10,052	.....
05074540	024–40	United States Secret Service	6,516	6,516	.....
05074550	024–50	Border and Transportation Security	112,932	105,441	7,491
05074560	024–60	United States Coast Guard	7,036	6,274	762
05074570	024–70	Emergency Preparedness and Response	4,792	4,374	418
05074580	024–80	Science and Technology	320	320	.....
05074590	024–90	Information Analysis and Infrastructure Protection	803	803	.....
050745ZZ		Total, Department of Homeland Security	143,858	135,185	8,673
05075035	025–35	Department of Housing and Urban Development: Management and Administration	10,028	5,372	4,656
		Department of the Interior:			
05076004	010–04	Bureau of Land Management	11,065	10,691	374
05076006	010–06	Minerals Management Service	1,763	1,632	131
05076008	010–08	Office of Surface Mining Reclamation and Enforcement	580	577	3
05076010	010–10	Bureau of Reclamation	5,757	3,087	2,670
05076011	010–11	Central Utah Project	17	17	.....
05076012	010–12	United States Geological Survey	8,950	6,007	2,943
05076018	010–18	United States Fish and Wildlife Service	9,378	8,605	773
05076024	010–24	National Park Service	20,671	19,983	688
05076076	010–76	Bureau of Indian Affairs	9,605	8,901	704

05076084	010–84	Departmental Management	1,810	479	1,331
05076085	010–85	Insular Affairs	40	40	.....
05076086	010–86	Office of the Solicitor	422	366	56
05076087	010–88	Office of Inspector General	270	270	.....
05076088	010–91	Natural Resources Damage Assessment and Restoration	6	6	.....
05076089	010–90	Office of Special Trustee for American Indians	581	581	.....
05076092	010–92	National Indian Gaming Commission	81	81	.....
050760ZZ		Total, Department of the Interior	70,996	61,323	9,673
		Department of Justice:			
05077003	011–03	General Administration	3,645	2,805	840
05077004	011–04	United States Parole Commission	104	104	.....
05077005	011–05	Legal Activities and U.S. Marshals	22,694	19,159	3,535
05077010	011–10	Federal Bureau of Investigation	31,939	29,081	2,858
05077012	011–12	Drug Enforcement Administration	10,644	9,189	1,455
05077014	011–14	Bureau of Alcohol, Tobacco, Firearms, and Explosives	4,940	4,885	55
05077020	011–20	Federal Prison System	41,565	38,466	3,099
05077021	011–21	Office of Justice Programs	964	947	17
050770ZZ		Total, Department of Justice	116,495	104,636	11,859
		Department of Labor:			
05078005	012–05	Employment and Training Administration	1,209	1,206	3
05078011	012–11	Employee Benefits Security Administration	887	887	.....
05078012	012–12	Pension Benefit Guaranty Corporation	806	.....	806
05078015	012–15	Employment Standards Administration	4,120	3,992	128
05078018	012–18	Occupational Safety and Health Administration	2,208	2,203	5
05078019	012–19	Mine Safety and Health Administration	2,187	2,187	.....
05078020	012–20	Bureau of Labor Statistics	2,475	2,445	30
05078025	012–25	Departmental Management	2,884	2,181	703
050780ZZ		Total, Department of Labor	16,776	15,101	1,675
		Department of State:			
05079005	014–05	Administration of Foreign Affairs	29,685	18,895	10,790
05079015	014–15	International Commissions	307	273	34
05079025	014–25	Other	292	292	.....

ATTACHMENT 4—Continued

Seq. No.	Agency/Bureau	Department/Agency/Bureau Title	Total CY FTEs	Dir CY FTEs	Reim CY FTEs
050790ZZ		Total, Department of State	30,284	19,460	10,824
		Department of Transportation:			
05080004	021–04	Office of the Secretary	868	596	272
05080012	021–12	Federal Aviation Administration	47,659	46,307	1,352
05080015	021–15	Federal Highway Administration	3,133	3,104	29
05080017	021–17	Federal Motor Carrier Safety Administration	1,098	1,046	52
05080018	021–18	National Highway Traffic Safety Administration	673	673	.....
05080027	021–27	Federal Railroad Administration	827	827	.....
05080036	021–36	Federal Transit Administration	527	527	.....
05080040	021–40	Saint Lawrence Seaway Development Corporation	157	.....	157
05080050	021–50	Pipeline and Hazardous Materials Safety Administration	415	384	31
05080053	021–53	Research and Innovative Technology Administration	620	21	599
05080056	021–56	Office of Inspector General	430	372	58
05080061	021–61	Surface Transportation Board	150	141	9
05080070	021–70	Maritime Administration	827	462	365
050800ZZ		Total, Department of Transportation	57,384	54,460	2,924
		Department of the Treasury:			
05081005	015–05	Departmental Offices	3,035	2,016	1,019
05081006	015–04	Financial Crimes Enforcement Network	309	309	.....
05081010	015–10	Financial Management Service	2,134	2,044	90
05081013	015–13	Alcohol and Tobacco Tax and Trade Bureau	559	544	15
05081020	015–20	Bureau of Engraving and Printing	2,400	.....	2,400
05081025	015–25	United States Mint	2,108	.....	2,108
05081035	015–35	Bureau of the Public Debt	1,318	1,301	17
05081045	015–45	Internal Revenue Service	97,440	96,434	1,006
05081057	015–57	Comptroller of the Currency	2,791	.....	2,791
05081058	015–58	Office of Thrift Supervision	920	.....	920
050810ZZ		Total, Department of the Treasury	113,014	102,648	10,366
		Department of Veterans Affairs:			
05082015	029–15	Medical Programs	203,112	197,758	5,354
05082025	029–25	Benefits Programs	14,296	13,482	814

05082040	029–40	Departmental Administration	4,447	2,516	1,931
050820ZZ		Total, Department of Veterans Affairs	221,855	213,756	8,099
		Major Independents:			
07082500	202–00	Corps of Engineers—Civil Works	23,522	22,422	1,100
		Other Defense Civil Programs:			
07082615	200–15	American Battle Monuments Commission	390	390	.....
07082620	200–20	Armed Forces Retirement Home	485	485	.....
07082625	200–25	Cemeterial Expenses	100	100	.....
07082645	200–45	Selective Service System	154	154	.....
070826ZZ		Total, Other Defense Civil Programs	1,129	1,129	.....
07083000	020–00	Environmental Protection Agency	17,635	17,166	469
07083200	100–00	Executive Office of the President	1,832	1,831	1
		General Services Administration:			
07084005	023–05	Real Property Activities	5,759	.....	5,759
07084010	023–10	Supply and Technology Activities	4,533	61	4,472
07084030	023–30	General Activities	2,443	956	1,487
070840ZZ		Total, General Services Administration	12,735	1,017	11,718
		International Assistance Programs:			
07084503	184–03	Millennium Challenge Corporation	133	133	.....
07084515	184–15	Agency for International Development	2,337	2,211	126
07084520	184–20	Overseas Private Investment Corporation	225	225	.....
07084525	184–25	Trade and Development Agency	50	50	.....
07084535	184–35	Peace Corps	1,171	1,168	3
07084540	184–40	Inter-American Foundation	47	47	.....
07084550	184–50	African Development Foundation	32	32	.....
070845ZZ		Total, International Assistance Programs	3,995	3,866	129
07085000	026–00	National Aeronautics and Space Administration	19,440	19,271	169
07085200	422–00	National Science Foundation	1,301	1,301	.....
07086000	027–00	Office of Personnel Management	4,097	990	3,107
07087000	028–00	Small Business Administration	4,189	4,178	11

ATTACHMENT 4—Continued

Seq. No.	Agency/Bureau	Department/Agency/Bureau Title	Total CY FTEs	Dir CY FTEs	Reim CY FTEs
07090000	016–00	Social Security Administration	64,205	63,405	800
		Other Independents:			
08106000	306–00	Advisory Council on Historic Preservation	45	35	10
08109000	309–00	Appalachian Regional Commission	11	11	
08110000	310–00	Architectural and Transportation Barriers Compliance Board	30	30	
08113000	313–00	Barry Goldwater Scholarship and Excellence in Education Foun	2	2	
08114500	514–00	Broadcasting Board of Governors	2,341	2,341	
08116500	510–00	Chemical Safety and Hazard Investigation Board	42	42	
08118500	465–00	Christopher Columbus Fellowship Foundation	1	1	
08123000	323–00	Commission of Fine Arts	10	10	
08126000	326–00	Commission on Civil Rights	60	60	
08137000	338–00	Committee for Purchase from People Who Are Blind or Severely	29	29	
08138000	339–00	Commodity Futures Trading Commission	491	491	
08142000	343–00	Consumer Product Safety Commission	471	471	
08142500	485–00	Corporation for National and Community Service	589	589	
08145000	511–00	Court Services and Offender Supervision Agency for the Distr	1,390	1,390	
08146000	347–00	Defense Nuclear Facilities Safety Board	100	100	
08146200	517–00	Delta Regional Authority	3	3	
08146500	513–00	Denali Commission	12	12	
08148500	525–00	Election Assistance Commission	23	23	
08149000	350–00	Equal Employment Opportunity Commission	2,441	2,421	20
08150000	351–00	Export-Import Bank of the United States	420	420	
08151000	352–00	Farm Credit Administration	294		294
08154000	355–00	Farm Credit System Insurance Corporation	10	10	
08155000	356–00	Federal Communications Commission	1,999	21	1,978
		Federal Deposit Insurance Corporation:			
08156010	357–10	Bank Insurance	4,223	4,223	
08156020	357–20	Savings Association Insurance	619	619	
08156030	357–30	FSLIC Resolution	228	228	
08156040	357–40	FDIC—Office of Inspector General	160	160	
081560ZZ		Total, Federal Deposit Insurance Corporation	5,230	5,230	
08159000	360–00	Federal Election Commission	391	391	
08161000	362–00	Federal Financial Institutions Examination Council Appraisal	7	7	

08163000	364–00	Federal Housing Finance Board	146	.....	146
08164000	365–00	Federal Labor Relations Authority	175	175	.....
08165000	366–00	Federal Maritime Commission	133	133	.....
08166000	367–00	Federal Mediation and Conciliation Service	285	276	9
08167000	368–00	Federal Mine Safety and Health Review Commission	45	45	.....
08168000	369–00	Federal Retirement Thrift Investment Board	101	101	.....
08169000	370–00	Federal Trade Commission	1,080	430	650
08171000	372–00	Harry S. Truman Scholarship Foundation	5	5	.....
08173500	467–00	Intelligence Community Management Account	318	318	.....
08177000	378–00	International Trade Commission	380	380	.....
08180000	381–00	James Madison Memorial Fellowship Foundation	6	6	.....
08181000	382–00	Japan-United States Friendship Commission	6	6	.....
08186000	387–00	Marine Mammal Commission	11	11	.....
08188000	389–00	Merit Systems Protection Board	228	202	26
08188500	487–00	Morris K. Udall Scholarship and Excellence in National Envir	29	29	.....
08192000	393–00	National Archives and Records Administration	2,870	1,459	1,411
08193000	394–00	National Capital Planning Commission	57	57	.....
08199000	400–00	National Commission on Libraries and Information Science	6	6	.....
08212000	413–00	National Council on Disability	14	14	.....
08214000	415–00	National Credit Union Administration	963	2	961
08216000	417–00	National Endowment for the Arts	160	160	.....
08217000	418–00	National Endowment for the Humanities	175	170	5
08217500	474–00	Institute of Museum and Library Services	57	57	.....
08219000	420–00	National Labor Relations Board	1,865	1,865	.....
08220000	421–00	National Mediation Board	52	52	.....
08223000	424–00	National Transportation Safety Board	416	416	.....
08228000	429–00	Nuclear Regulatory Commission	3,125	3,108	17
08230000	431–00	Nuclear Waste Technical Review Board	18	18	.....
08231000	432–00	Occupational Safety and Health Review Commission	69	69	.....
08233000	434–00	Office of Government Ethics	80	80	.....
08234000	435–00	Office of Navajo and Hopi Indian Relocation	51	51	.....
08235000	436–00	Office of Special Counsel	113	113	.....
08240000	512–00	Presidio Trust	307	.....	307
08245000	446–00	Railroad Retirement Board	1,025	975	50
08248000	449–00	Securities and Exchange Commission	3,933	3,932	1
08251000	452–00	Smithsonian Institution	5,577	5,577	.....
08254000	455–00	Tennessee Valley Authority	12,019	.....	12,019
08254600	345–00	United States Court of Appeals for Veterans Claims	98	98	.....
08255000	456–00	United States Holocaust Memorial Museum	248	248	.....

ATTACHMENT 4—Continued

Seq. No.	Agency/Bureau	Department/Agency/Bureau Title	Total CY FTEs	Dir CY FTEs	Reim CY FTEs
99999999		Report Total	1,871,194	1,427,590	443,604

Question. Please provide a funding estimate for the DOC portion of the HCHB renovation by fiscal year for the project.

Answer. The Department is requesting $4.3 million for its portion of the HCHB renovation in fiscal year 2008. The total estimated cost for the Department is $21.6 million, through 2020.

Question. Please provide an itemized listing of the $4.3 million requested for HCHB renovation.

Answer. The itemized listing of the $4.3 million requested for HCHB renovation follows:

	Amount
Relocation and Planning	$156,000
DOC Construction Costs	1,441,000
Equipment and Furniture	2,117,000
Security	56,000
IT	530,000
Total	4,300,000

Question. How much does DOC spend on maintenance of the HCHB? What is the source of those funds? Does GSA provide any funding to support HCHB maintenance?

Answer. DOC spent approximately $12,413,000 for maintenance of the HCHB in fiscal year 2006. The source of funds is from the HCHB tenants through the Departmental Management's Working Capital Fund. GSA does not provide any funding to support HCHB maintenance.

DEPARTMENTAL MANAGEMENT—MEDIA QUESTIONS

Question. We understand that Commerce has been revising its over 20 year old communications policy for the last few months. What is the status of the policy and when can we expect it to be released and implemented?

Answer. On March 29, the Department released its new public communication policy, following three separate rounds of internal input from our employees, in particular our scientists, on the draft policy. The policy will take effect on May 14, following a 45 day time period to conduct training and outreach sessions with employees.

Question. What steps will the Department take to ensure that all staff are informed of and understand how to implement the policy?

Answer. We have publicly released the policy along with "Frequently Asked Question" document, and placed both on our website. We are providing a 45 day window of time before the policy takes effect in order to conduct training and outreach sessions with current employees. We are also considering ways to require annual "refresher" sessions as well as to require training for new employees.

Question. Will the revised policy include language to specifically address recent concerns raised by scientists regarding interference with the dissemination of their research results?

Answer. Yes, the new policy provides a series of clear principles which reiterate the Department's support for the open exchange of scientific ideas, information, and research. The policy also specifically provides for Fundamental Research Communications (a communications "carve-out" for scientific research), a series of best practices for public affairs employees, and provides operating units with the flexibility to use existing, or issue new, guidance regarding the implementation of the new policy (as long as it is consistent with the Department policy).

Question. Specifically, will the new policy define the types of media contacts, press releases, presentations, or other documents that would be subject to the policy?

Answer. Yes, the policy provides clear definitions of what types of documents are covered by the policy.

Question. Describe situations, if any, in which prior approval is required for press releases and media interviews.

Answer. Yes, the policy describes the situations, if applicable, which require prior approval for press releases and media interviews.

Question. If prior approval is required, describe the specific process for approving press releases and media interviews.

Answer. The Department's policy provides an overall conceptual framework for public communications, and set general Department-wide guidelines. Because the 13 agencies within the Department are so diverse, the new policy will provide oper-

ating units the flexibility to continue to set more specific procedures, which must be consistent with the overall Department policy.

Question. Explicitly delegate authority to approve releases or interviews of a time sensitive nature or local interest to appropriate levels within the Commerce agencies.

Answer. Yes, the new policy explicitly delegates authority to approve releases or interviews of a time sensitive or local interest to appropriate levels within the Commerce agencies.

Question. Affirm that scientists can express personal views and share those views with the media as long as they declare them to be their own.

Answer. Yes, the policy specifically includes a section explaining how employees may communicate their personal views with an appropriate disclaimer.

Question. Define the role of the Office of Public Affairs office with regard to facilitating the dissemination of research.

Answer. Yes, the new policy defines the role of the Office of Public Affairs with regard to facilitating the dissemination of research. Each operating unit will have the flexibility to continue to use existing or issue new guidance regarding the implementation and interpretation of the policy, which must comport with the overall Department policy.

Question. Delineate a process to resolve disputes regarding dissemination of research.

Answer. Yes, the new policy delineates a process to resolve disputes regarding dissemination of research.

SPECIAL BILL LANGUAGE

Question. Please provide an explanation/background of each of the provisions within the Commerce portion of the appropriations bill. For example, under ITA there is the following provision, "purchase or construction of temporary demountable exhibition structures for use abroad." Why is special language required? Isn't this a "necessary" expense?

Census Bureau (Account: PC&P)

": Provided, That none of the funds provided in this or any other Act for any fiscal year may be used for the collection of Census data on race identification that does not include 'some other race' as a category."

Census was considering eliminating the "Some Other Race" category on the questionnaire and putting the Hispanic check box at the top of the list. Congress opposed that option out of concern that it would deter Hispanics' self-identification of those who did not also fit into any of the standard race categories, thereby possibly under recording Hispanic populations.

Departmental Management (Account: S&E)

"For expenses necessary for the departmental management of the Department of Commerce provided for by law, including not to exceed $5,000 for official entertainment, $47,466,000: Provided, That not to exceed 11 full-time equivalents and $1,490,000 shall be expended for the legislative affairs function of the Department."

Appropriated funds may not be used for entertainment expenses except when specifically authorized by law. This provision authorizes the Secretary to use up to $5,000 from appropriated funds for entertaining foreign dignitaries and U.S. citizens who are involved in activities of interest to the Department.

Congress added language imposing a ceiling on the legislative affairs function of the Department was included beginning in the fiscal year 2004 Appropriations Act.

International Trade Administration

"For necessary expenses for international trade activities of the Department of Commerce provided for by law, and for engaging in trade promotional activities abroad, including expenses of grants and cooperative agreements for the purpose of promoting exports of United States firms, without regard to the provisions of law set forth in 44 U.S.C. 3702 and 3703;"

44 U.S.C. 3702 specifies that an executive department may not publish or pay for advertisements without written authority from the head of that department.

The nature of ITA's overseas exhibition program requires maximum flexibility in advertising requirements since exhibitions may be changed, added, or canceled. When such changes take place, advertisements must be placed as soon as possible to inform the local business community. This exception from 44 U.S.C. 3702 will provide the flexibility, which is required to effectively advertise for these exhibitions.

44 U.S.C. 3703 stipulates that prices paid for advertising may not exceed the commercial rates charged to private individuals, with the usual discounts. Since the

United States Government does not have sovereign status in other countries and is charged commercial rates without the discounts required by 44 U.S.C. 3703, this exception is necessary to permit contracting in a manner which conforms to the realities of foreign advertising markets.

"full medical coverage for dependent members of immediate families of employees stationed overseas and employees temporarily posted overseas;"

This language permits the International Trade Administration to extend to certain of its overseas employees the same benefits afforded domestically employed Federal employees and employees of ITA's Foreign Commercial Service in equivalent positions overseas.

"travel and transportation of employees of the United States and Foreign Commercial Service between two points abroad, without regard to 49 U.S.C. 40118;"

49 U.S.C. §40118(d) exempts State and USAID officials from the requirement that government travel between two points outside the United States be accomplished by U.S. air carrier. This phrase clarifies that U.S. and Foreign Commercial Service officers are included in the exemption, notwithstanding a Comptroller General decision to the contrary. This exemption is necessary and appropriate in that most of the travel undertaken by U.S. and Foreign Commercial Service officers occurs abroad, where U.S. air carriers are generally not reasonably available.

"employment of Americans and aliens by contract for services;"

44 CG 761, OPM guidance, and House Report 89–188 have concluded that Federal agencies must have specific authority to employ personnel by contract. In order to present its overseas exhibitions, ITA often requires the use of narrators, demonstrators, receptionists, clerical, and facilities maintenance personnel who speak the language of the host country; are familiar with local practices and procedures; or who only need to be employed for a short period of time. In addition, in some cases, it is more advantageous to employ U.S. citizens in the host country (generally members of an employee's family) because they have greater familiarity with American methods and, therefore, require less effort to train.

"rental of space abroad for periods not exceeding 10 years, and expenses of alteration, repair, or improvement;"

Buildings, pavilions, and space in such structures must be rented for overseas exhibitions. However, rental terms are typically set by schedules established by fair authorities and are not negotiated or established competitively. In addition, organizers may limit the build-out to approved contractors at scheduled prices. This phrase clarifies that ITA may enter into leases for real property and make such improvements as are necessary without limitation.

"purchase or construction of temporary demountable exhibition structures for use abroad;"

40 U.S.C. 601 prohibits the construction of public buildings except by the Administrator of the General Services Administration. Authority to purchase or construct such demountable structures is necessary to allow ITA to present exhibitions overseas when permanent exhibition facilities are not available.

"payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries;"

28 U.S.C. 2672 provides for settlement of tort claims for monetary damages of $25,000 or less against the Unites States by the head of each federal agency for loss of property or personal injury or death caused by a negligent or wrongful act or omission of any employee of the Government while acting within the scope of his employment in circumstances where the United States, if a private person, would be liable under local law. However, 28 U.S.C. 2680 exempts the settlement of tort claims which arise abroad from the provisions of 28 U.S.C. 2672. The language exempts ITA from 22 U.S.C. 2680 and covers the settlement of tort claims against the United States, which arise in connection with the ITA's trade promotion activities abroad.

"not to exceed $327,000 for official representation expenses abroad;"

Appropriated Funds are generally not available for official representation, absent specific statutory authority. This gives ITA the authority to spend up to $327,000 on official representation abroad.

"purchase of passenger motor vehicles for official use abroad, not to exceed $45,000 per vehicle; obtaining insurance on official motor vehicles, and rental of tie lines;"

Per 31 U.S.C. 1343, an appropriation may be expended to purchase passenger motor vehicles only as specifically authorized by law and places certain limitations on the total cost of such vehicles. The annual appropriations act sets the general limits on the total cost of the vehicles. This language provides ITA with the authority to exceed the general amount (up to $45,000) so that it can purchase vehicles abroad.

"$406,925,000, to remain available until September 30, 2007, of which $8,000,000 is to be derived from fees to be retained and used by the International Trade Administration, notwithstanding 31 U.S.C. 3302"

Per 31 U.S.C. 3302, agencies may not retain or use fees unless specifically authorized by law. This language provides ITA the necessary authorization to use these collections to offset its appropriation.

"That negotiations shall be conducted within the World Trade Organization to recognize the right of members to distribute monies collected from antidumping and countervailing duties:"

This language added by Congress directed ITA to work with USTR to continue negotiations with the WTO regarding the "Byrd Amendment". In 2003, the WTO ruled the Continued Dumping and Subsidy Offset Act of 2000 or "CDSOA" (Byrd Amendment), which provides for the distribution of duties to the domestic parties that supported the petition under certain circumstance, was not in compliance.

When the President signed the Deficit Reduction Act of 2005 on February 8, 2006, legislation was enacted that will bring the United States into compliance with the WTO Dispute Settlement Body ruling on the Byrd Amendment—the legislation repeals the Byrd Amendment for entries made on or after October 1, 2007.

": Provided further, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities without regard to section 5412 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4912);"

Having the references to 22 U.S.C. 2245(f) and 2458(c) in the annual appropriations act permits the International Trade Administration (ITA) to accept, retain, and expend or otherwise utilize contributions of funds, property, and services from foreign governments, international organizations and private individuals, firms, associations, agencies and other groups for the purposes of furthering ITA's mission as generally defined in the annual appropriations act, namely trade promotion and international trade activities. Among other activities, ITA relies on this authority to charge, retain, and expend fees for export promotion services benefiting individual U.S. exporters.

15 U.S.C. 4912 states that the Secretary shall provide reasonable public services and access (including electronic access) to any information maintained as part of the National Trade Data Bank and may charge reasonable fees consistent with section 552 of title 5 (the Freedom of Information Act, which includes specific provisions regarding fees to be assessed under that Act). Authorizing ITA to carry out these activities without regard to 15 U.S.C. 4912 allows ITA to charge other than the public services and access fees for export promotion services, even when such services rely on or incorporate data contained in the National Trade Data Bank.

"and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act shall include payment for assessments for services provided as part of these activities."

This provision was added in 1990 to clarify a question pending at the time with GAO concerning whether ITA's authority to accept contributions under MECEA was limited to voluntary gifts. This explicitly gives ITA the authority to accept contributions as assessments or fees as well as gifts.

"Provided further, That the International Trade Administration shall be exempt from the requirements of Circular A–25 (or any successor administrative regulation or policy) issued by the Office of Management and Budget:"

This language, inserted by Congress, increases the flexibility that ITA has in the establishment of prices and fees for services beyond that allowed by OMB Circular A–25.

": Provided further, That negotiations shall be conducted within the World Trade Organization consistent with the negotiating objectives contained in the Trade Act of 2002, Public Law 107–210."

The principle textile and apparel negotiating objectives handed to the U.S. government in the Trade Act of 2002 are as follows:

(16) TEXTILE NEGOTIATIONS.—The principle negotiating objectives of the United States with respect to trade in textiles and apparel articles are to obtain competitive opportunities for United States exports of textiles and apparel in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in United States markets and to achieve fairer and more open conditions of trade in textiles and apparel.

United States Patent and Trademark Office

"Provided further, That not less than 657 full-time equivalents, 690 positions and $85,017,000 shall be for the examination of trademark applications; and not less

than 5,810 full-time equivalents, 6,241 positions and $906,142,000 shall be for the examination and searching of patent applications: Provided further, That not more than 265 full-time equivalents, 272 positions and $37,490,000 shall be for the Office of the General Counsel: Provided further, That not more than 82 full-time equivalents, 83 positions and $25,393,000 shall be for the Office of the Administrator for External Affairs:"

Congress wanted to ensure that the core examination functions were properly staffed and funded.

"Provided further, That any deviation from the full-time equivalent, position, and funding designations set forth in the preceding four provisos shall be subject to the procedures set forth in section 605 of this Act:"

This reprogramming provision was added after fiscal year 2005 because the floors and ceilings are statutory and Congress had to give us a legal way of reprogramming if we weren't going to hit our levels. When we tried to reprogram in fiscal year 2005, staff pointed out that it was the law that we hit the levels specified, neither they nor we had any discretion in the matter.

"Provided further, That from amounts provided herein, not to exceed $1,000 shall be made available in fiscal year 2006 for official reception and representation expenses: Provided further, That notwithstanding section 1353 of title 31, United States Code, no employee of the United States Patent and Trademark Office may accept payment or reimbursement from a non-Federal entity for travel, subsistence, or related expenses for the purpose of enabling an employee to attend and participate in a convention, conference, or meeting when the entity offering payment or reimbursement is a person or corporation subject to regulation by the Office, or represents a person or corporation subject to regulation by the Office, unless the person or corporation is an organization exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986:"

Appropriators were concerned that PTO officials had been accepting invitational travel, usually from non-profits but occasionally from other entities. This also ended the invitational examiner education program.

": Provided further, That in fiscal year 2006, from the amounts made available for 'Salaries and Expenses' for the United States Patent and Trademark Office (PTO), the amounts necessary to pay: (1) the difference between the percentage of basic pay contributed by the PTO and employees under section 8334(a) of title 5, United States Code, and the normal cost percentage (as defined by section 8331(17) of that title) of basic pay, of employees subject to subchapter III of chapter 83 of that title; and (2) the present value of the otherwise unfunded accruing costs, as determined by the Office of Personnel Management, of post-retirement life insurance and post-retirement health benefits coverage for all PTO employees, shall be transferred to the Civil Service Retirement and Disability Fund, the Employees Life Insurance Fund, and the Employees Health Benefits Fund, as appropriate, and shall be available for the authorized purposes of those accounts."

OPM had been paying certain amounts on behalf of USPTO for CSRS retirement, health insurance, and life insurance. Because PTO is fully-user fee funded, the Administration proposed that USPTO should pay the full costs of its employees' benefits.

Bureau of Industry and Security

"That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities"

The MECEA language is intended to allow BIS to receive and retain the funds it receives from attendees at BIS export training programs, such as Update. Without this language, all money received from attendees would have to be deposited in Treasury.

National Telecommunications and Information Administration

": Provided, That notwithstanding 31 U.S.C. 1535(d), the Secretary of Commerce shall charge Federal agencies for costs incurred in spectrum management, analysis and operations, and related services and such fees shall be retained and used as offsetting collections for costs of such spectrum services, to remain available until expended."

In 1996, Congress asked NTIA to investigate the feasibility of charging federal agencies for spectrum management services. NTIA proposed to Congress that each agency be charged in proportion to its use of the spectrum, using a simple fee-per-assignment formula. As a result, Congress enacted language in the fiscal year 1996 appropriation, Public Law 104–134, which authorized the Secretary of Commerce to

charge federal agencies for spectrum management, analysis, operations, and related services to cover spectrum management costs.

Because NTIA experienced significant difficulties collecting fees from multiple federal agencies, Congress subsequently enacted additional language in the fiscal year 1997 appropriation, Public Law 104–208, which authorized the Secretary of Commerce to charge fees, but also specified that the federal agencies shall pay the fees charged by NTIA for spectrum management costs or they would have to cease using the spectrum.

Through NTIA's annual appropriation, Congress has enacted this authority each fiscal year. Currently, NTIA uses this authority to collect 80 percent of its costs for spectrum management services each fiscal year. The specific legislative language is necessary to permit NTIA to continue to collect spectrum management fees without the particular requirements of the Economy Act (31 U.S.C. 1535(d)) being imposed on the transfer of funds and to prevent the expiration of funds transferred from other agencies for NTIA's ongoing spectrum management services.

": Provided further, That the Secretary of Commerce is authorized to retain and use as offsetting collections all funds transferred, or previously transferred, from other Government agencies for all costs incurred in telecommunications research, engineering, and related activities by the Institute for Telecommunication Sciences of NTIA, in furtherance of its assigned functions under this paragraph, and such funds received from other Government agencies shall remain available until expended."

NTIA's laboratory in Boulder, Colorado, the Institute of Telecommunication Sciences, (ITS) performs spectrum-related research and analysis for other federal agencies on a reimbursable basis. Due to the nature of this work, which involves projects that do not fit into a fiscal year timetable, it is necessary for NTIA to ensure that the funds transferred from other agencies for this reimbursable work do not expire at the fiscal year's end. Frequently, projects and related funding need to be carried over into the next fiscal year. Therefore, NTIA continues to need authorization to prevent the expiration of funds transferred from other agencies for ITS reimbursable projects. Currently, ITS reimbursable projects constitute about 60 percent of its annual budget.

Operations Research and Facilities

"Provided, That fees and donations received by the National Ocean Service for the management of national marine sanctuaries may be retained and used for the salaries and expenses associated with those activities, notwithstanding 31 U.S.C. 3302:"

Per 31 U.S.C. 3302, fees and donations are not available to be retained and used by agencies without specific authority.

"Provided further, That in addition, $3,000,000 shall be derived by transfer from the fund entitled 'Coastal Zone Management' and in addition $67,000,000 shall be derived by transfer from the fund entitled 'Promote and Develop Fishery Products and Research Pertaining to American Fisheries':"

This language transfers funds from special NOAA accounts to Operations, Research, and Facilities account (ORF) to partially offset the appropriation.

$67 million was transferred from the Promote and Develop account to the ORF account. The Promote and Develop account is funded by a thirty percent levy on imported fish product duties and transferred from the Department of Agriculture to the Promote and Develop American Fishery Products account.

$3 million was transferred from the Coastal Zone Management Fund. This fund was established by the Costal Zone Act Reauthorization Amendments of 1990 (CZARA). The fund consists of loan repayments from the former Coastal energy Impact Program. The proceeds are to be used to offset the Operations, Research, and Facilities account for the costs of implementing the Coastal Zone Management Act of 1972, as amended.

"Provided further, That no general administrative charge shall be applied against an assigned activity included in this Act or the report accompanying this Act:"

This proviso is included to forestall NOAA from paying for general administration via a tax on the line offices and specific projects contained in the report language.

"Provided further, That the total amount available for the National Oceanic and Atmospheric Administration corporate services administrative support costs shall not exceed $179,036,000:"

This proviso strengthens the previous proviso and puts a hard cap on NOAA administration costs.

"Provided further, That payments of funds made available under this heading to the Department of Commerce Working Capital Fund including Department of Commerce General Counsel legal services shall not exceed $34,000,000:"

This proviso is included to limit the Department's assessment of NOAA for Working Capital Fund costs.

"Provided further, That any deviation from the amounts designated for specific activities in the report accompanying this Act, or any use of deobligated balances of funds provided under this heading in previous years, shall be subject to the procedures set forth in section 605 of this Act:"

This strengthens the force of the report language by requiring a notification to the Appropriations Committees if NOAA deviates from it, and increases oversight of spending from deobligations by requiring notification as well.

"Provided further, That grants to States pursuant to sections 306 and 306A of the Coastal Zone Management Act of 1972, as amended, shall not exceed $2,000,000, unless funds provided for 'Coastal Zone Management Grants' exceed funds provided in the previous fiscal year:"

This language requires NOAA to divide up CZM grants fairly equally between the states (by formula), protecting states with small coastlines and preventing states with long coastlines (CA, AK, FL) from receiving the bulk of the grant funds.

"Provided further, That if funds provided for 'Coastal Zone Management Grants' exceed funds provided in the previous fiscal year, then no State shall receive more than 5 percent or less than 1 percent of the additional funds:"

This language was inserted to ensure that if more funds were available for CZM than in the prior year, all participating states would benefit.

"Provided further, That the personnel management demonstration project established at the National Oceanic and Atmospheric Administration pursuant to 5 U.S.C. 4703 may be expanded by 3,500 full-time positions to include up to 6,925 full-time positions and may be extended indefinitely:"

This language expanded the scope of the payroll demonstration project.

"Provided further, That the Administrator of the National Oceanic and Atmospheric Administration may engage in formal and informal education activities, including primary and secondary education, related to the agency's mission goals:"

This provides specific authorization for NOAA to engage in educational activities.

": Provided further, That, in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 611 et seq.), within funds appropriated under this heading, $2,000,000 shall remain available until expended, for the cost of loans under section 211(e) of title II of division C of Public Law 105–277, such loans to have terms of up to 30 years and to be available for use in any of the Bering Sea and Aleutian Islands fisheries."

This language provided a $2 million subsidy to cover the costs associated with a $200 million loan to the Community Develop Quota fisheries in the Bering Sea and Aleutian Islands. These loans have terms of up to 30 years.

Procurement, Acquisition and Construction

"Provided, That of the amounts provided for the National Polar-orbiting Operational Environmental Satellite System, funds shall only be made available on a dollar for dollar matching basis with funds provided for the same purpose by the Department of Defense:"

This proviso was included because of concern that DOD would shift costs to NOAA by under funding their portion of the project.

"Provided further, That except to the extent expressly prohibited by any other law, the Department of Defense may delegate procurement functions related to the National Polar-orbiting Operational Environmental Satellite System to officials of the Department of Commerce pursuant to section 2311 of title 10, United States Code:"

Air Force officials asserted that NOAA officials could not perform certain procurement functions because they were not authorized to do so. This proviso was included to satisfy the need for authorization.

"Provided further, That any deviation from the amounts designated for specific activities in the report accompanying this Act, or any use of deobligated balances of funds provided under this heading in previous years, shall be subject to the procedures set forth in section 605 of this Act:"

This strengthens the force of the report language by requiring a notification to the Appropriations Committees if NOAA deviates from it, and increases oversight of spending from deobligations by requiring notification as well.

"Provided further, That beginning in fiscal year 2007 and for each fiscal year thereafter, the Secretary of Commerce shall include in the budget justification materials that the Secretary submits to Congress in support of the Department of Commerce budget (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) an estimate for each National Oceanic and Atmospheric Administration procurement, acquisition and construction program having a total multiyear program cost of more than $5,000,000 and an estimate of the budgetary requirements for each such program for each of the five subsequent fiscal years:"

This proviso was added by Congress and requires five years of outyear projections for programs with total costs of $5 million or more.

"Provided further, That subject to amounts provided in advance in appropriations Acts, the Secretary of Commerce is authorized to enter into a lease with The Regents of the University of California for land at the San Diego Campus in La Jolla for a term not less than 55 years:"

NOAA is seeking to replace its Southwest Fisheries Science Laboratory at La Jolla, CA, because it sits at the edge of a cliff that is receding. Because the University of California offered suitable land nearby but required a long-term lease, NOAA needed specific authorization to enter into a lease of more than 20 years in order to consider the offer.

": Provided further, That funds appropriated for the construction of the National Oceanic and Atmospheric Administration Pacific Regional Center are an additional increment in the incremental funding planned for the Center, and may be expended incrementally, through multi-year contracts for construction and related activities, provided that obligations under any such multi-year contract shall be subject to the availability of appropriations."

This provides NOAA greater flexibility in spending the funds for the Pacific Regional Center. Usually, NOAA would require appropriations in an amount that would build or buy something that would be useful even without further appropriation. However, even the major increments for this project are substantially in excess of the amounts provided to date. Without this authorization, NOAA would not be able to spend the funds appropriated, and they would expire unused.

Fisheries Finance Program Account

"Provided, That such costs, including the cost of modifying such loans, shall be as defined in the Federal Credit Reform Act of 1990:"

Loans given out under the Fisheries Finance Program are to use accounting principles specified under the Federal Credit Reform Act of 1990.

"Provided further, That these funds are only available to subsidize gross obligations for the principal amount of direct loans not to exceed $5,000,000 for Individual Fishing Quota loans, and not to exceed $59,000,000 for traditional direct loans, of which $19,000,000 may be used for direct loans to the United States menhaden fishery:"

Provides loan authority for two loan programs.

Direct loan authority of $5 million was given for Individual Fishing Quota (IFQ). These loans provide fishery wide financing to ease the transition to sustainable fisheries through its fishing capacity reduction programs and provides financial assistance in the form of loans to fishermen who fish from small vessels and entry level fishermen to promote stability and reduce consolidation in already rationalized fisheries.

Provides direct loan authority of $59 million was given for Traditional Direct loans. Traditional Direct Loans are available to U.S. citizens who otherwise qualify for financing or refinancing the construction, reconstruction, reconditioning, and in some cases, the purchasing of fishing vessels, shoreside processing, aquaculture, and mariculture facilities. Language was also included directing that of the $59 million in traditional loans, priority should be given to providing $19 million in direct loans to the menhaden fishery.

": Provided further, That none of the funds made available under this heading may be used for direct loans for any new fishing vessel that will increase the harvesting capacity in any United States fishery."

This proviso makes it unlawful for a fisherman to use Fisheries Finance Program loans to modify or replace a fishing vessel such that it would materially increase the harvesting capacity of the fishery. This language prevents fisheries finance program loans from contributing to over-fishing.

ECONOMIC DEVELOPMENT REPRESENTATIVE

Question. The Economic Development Representative (EDR) that services Maryland has been vacant for well over a year. When will this vacancy be filled? If not, please explain.

Answer. The Economic Development Administration (EDA) has initiated the competitive civil service recruitment process to fill the vacant Economic Development Representative (EDR) position in the Maryland/West Virginia office. This office is to be located in West Virginia but would have convenient access to Maryland. EDA currently has five vacant EDR positions nationwide. Recruitment is currently underway to fill the three vacancies located in Maryland/West Virginia, Minnesota, and Missouri. EDA anticipates the recruitment process to fill the other two vacancies will begin sometime in April.

UNOBLIGATED BALANCE LEVELS

Question. Please provide unobligated balance levels for the S&E appropriation and the Economic Development Assistance Program appropriation for fiscal years 2001 through 2006.

Answer. The following unobligated balance levels are provided for the S&E appropriation and the Economic Development Assistance Program appropriation for fiscal years 2001 through 2006. The EDAP balances primarily consist of deobligations of prior year obligations, and were re-obligated against new projects in subsequent years.

[In thousands of dollars]

Fiscal year [1]	S&E	EDAP
2001	240	63,777
2002	42	11,902
2003	338	14,826
2004	[2] 912	15,355
2005	20	10,965
2006	[3] 96	10,757

[1] Balances were for year end for each year.
[2] Balance due to EOY DOD reimbursable credit.
[3] As corrected.

ECONOMIC DEVELOPMENT ADMINISTRATION CUT

Question. What will be the consequence of an $80 million cut in EDA grants? How many fewer projects will be funded? How many communities will not receive assistance?

Answer. We believe the President's budget balances competing priorities and provides sufficient resources for the agency to accomplish its mission. A funding level of $170 million will provide 60–65 public works-type grants and 25 economic adjustment-type construction grants, which will generate 19,000 new higher-skill jobs. EDA will focus these resources on the Nation's most distressed communities. EDA fiscal year 2006 and fiscal year 2007 funding levels supported approximately 140 investments.

STAFFING BREAKOUT

Question. Please provide a staffing breakout (including contractors) at headquarters and at each of the regional offices as of the end of each fiscal year (2001–2006) as well as a current breakout as of the latest pay period. Provide staffing levels by appointment, grade, and position.

Answer. Attachment 5 lists on-board staffing, including contractors, at headquarters and each regional office at the end of each fiscal year, and the current staffing, including appointment, grade and position.

ATTACHMENT 5.—ECONOMIC DEVELOPMENT ADMINISTRATION STAFFING CHART AS OF 3/20/2007—EMPLOYEES

Office	Positions	Appointment	Grade
Office of the Assistant Secretary	Assistant Secretary	Political	([1])
Office of the Assistant Secretary	DAS for Economic Development	Political	([2])
Office of the Assistant Secretary	Senior Advisor to Assistant Secretary	Political	([2])
Office of the Assistant Secretary	Special Advisor	Political	11
Office of the Assistant Secretary	Confidential Assistant	Political	11
Office of the Assistant Secretary	Secretary	Career	10
Office of Chief Counsel	Chief Counsel	Career	15
Office of Chief Counsel	Attorney Advisor	Career	14
Office of Chief Counsel	Attorney Advisor	Career	14
Office of Chief Counsel	Paralegal	Career	12
Office of Chief Counsel	Administrative Assistant	Career	8
Office of Management Services	CFO/DAS for Management Services	Career	([2])
Office of Management Services	Secretary	Career	8
Office of Management Services	Program Analyst—PMF	Career	12
Office of Management Services	Deputy CFO/Director Administration & Support Svs Div.	Career	15
Office of Management Services	Human Resources	Career	15

ATTACHMENT 5.—ECONOMIC DEVELOPMENT ADMINISTRATION STAFFING CHART AS OF 3/20/2007—EMPLOYEES—Continued

Office	Positions	Appointment	Grade
Office of Management Services	Management Analyst	Career	14
Office of Management Services	Management Analyst	Career	13
Office of Management Services	Management Analyst	Career	13
Office of Management Services	Financial Analyst	Career	14
Office of Management Services	Accountant	Career	14
Office of Management Services	Accountant	Career	13
Office of Management Services	Director, Budgeting & Performance Evaluation Division.	Career	15
Office of Management Services	Senior Program Analyst	Career	14
Office of Management Services	Program Analyst	Career	13
Office of Management Services	Program Analyst	Career	13
Office of Management Services	Program Analyst	Career	7
Office of Management Services	Grant Specialist—PMF	Career	11
Office of Management Services	Budget Analyst	Career	13
Office of Information Technology	Chief Information Officer	Career	15
Office of Information Technology	Information Tech Specialist	Career	14
Office of Information Technology	Information Tech Specialist	Career	13
Office of Information Technology	Information Tech Specialist	Career	11
Office of Information Technology	Information Tech Specialist	Career	7
Office of External Affairs and Communications	DAS for External Affairs and Communications.	Political	(2)
Office of External Affairs and Communications	Secretary	Career	8
Office of External Affairs and Communications	Director, Public Affairs	Political	15
Office of External Affairs and Communications	Web Master	Career	13
Office of External Affairs and Communications	Senior Public Affairs Specialist	Career	13
Office of External Affairs and Communications	Public Affairs Specialist	Career	12
Office of External Affairs and Communications	Prog Comm Specialist Team Leader	Career	15
Office of External Affairs and Communications	Management Analyst	Career	13
Office of External Affairs and Communications	Intergovernmental Affairs Specialist	Career	13
Office of External Affairs and Communications	Investment Information Specialist	Career	12
Office of External Affairs and Communications	Comm & Cong Liaison Spec	Career	12
Office of External Affairs and Communications	Investment Information Specialist	Career	12
Office of External Affairs and Communications	Program Communications Asst	Career	7
Atlanta Regional Office	Regional Director	Career	(2)
Atlanta Regional Office	EDR/Kentucky	Career	13
Atlanta Regional Office	EDR/Mississippi	Career	13
Atlanta Regional Office	Administrative Officer	Career	12
Atlanta Regional Office	Econ Dev Prog Spec	Career	12
Atlanta Regional Office	Econ Dev Prog Spec	Career	12
Atlanta Regional Office	Econ Dev Assistant	Career	6
Atlanta Regional Office	Civil Engineer	Career	14
Atlanta Regional Office	Civil Engineer	Career	13
Atlanta Regional Office	IT Specialist	Career	12
Atlanta Regional Office	Project Manager	Career	12
Atlanta Regional Office	Chief, Public Works & Econ Adjust	Career	14
Atlanta Regional Office	Program Specialist	Career	12
Atlanta Regional Office	Program Specialist	Career	12
Atlanta Regional Office	Program Specialist	Career	12
Atlanta Regional Office	Econ Dev Prog Spec	Career	11
Atlanta Regional Office	Regional Counsel	Career	15
Atlanta Regional Office	Econ Dev Prog Spec	Career	12
Atlanta Regional Office	Secretary O/A	Career	6
Austin Regional Office	Regional Director	Career	(2)
Austin Regional Office	Regional Counsel	Career	15
Austin Regional Office	Environmental Specialist	Career	13
Austin Regional Office	Area Director	Career	14
Austin Regional Office	EDR/Louisiana	Career	13
Austin Regional Office	Senior Program Specialist	Career	13
Austin Regional Office	Econ Dev Prog Specialist	Career	12
Austin Regional Office	Mgmt Analyst	Career	12
Austin Regional Office	Area Director	Career	14
Austin Regional Office	Civil Engineer	Career	13
Austin Regional Office	Civil Engineer	Career	13

ATTACHMENT 5.—ECONOMIC DEVELOPMENT ADMINISTRATION STAFFING CHART AS OF 3/20/2007—EMPLOYEES—Continued

Office	Positions	Appointment	Grade
Austin Regional Office	OPCS Officer	Career	12
Austin Regional Office	Office Tech/Office Auto	Career	5
Austin Regional Office	Area Director	Career	14
Austin Regional Office	EDR—Arkansas	Career	13
Austin Regional Office	Econ Dev Prog Specialist	Career	12
Austin Regional Office	Econ Dev Prog Specialist	Career	12
Austin Regional Office	Econ Dev Prog Specialist	Career	12
Chicago Regional Office	Regional Director	Career	(2)
Chicago Regional Office	Regional Counsel	Career	15
Chicago Regional Office	EDR/Ohio/Indiana	Career	13
Chicago Regional Office	EEO Specialist	Career	13
Chicago Regional Office	Econ Dev Prog Specialist	Career	9
Chicago Regional Office	Supv Program Specialist	Career	14
Chicago Regional Office	Engineer	Career	13
Chicago Regional Office	EA Program Specialist	Career	12
Chicago Regional Office	PW Program Specialist	Career	12
Chicago Regional Office	PW Program Specialist	Career	12
Chicago Regional Office	Supervisory Econ Dev Prog Spec	Career	14
Chicago Regional Office	Engineer	Career	13
Chicago Regional Office	EA Program Specialist	Career	12
Chicago Regional Office	OPCS Officer	Career	14
Chicago Regional Office	Administrative Officer	Career	12
Chicago Regional Office	Secretary	Career	6
Chicago Regional Office	Secretary	Career	6
Chicago Regional Office	Coordinator	Career	14
Denver Regional Office	Regional Director	Career	(2)
Denver Regional Office	Regional Counsel	Career	15
Denver Regional Office	Civil Engineer	Career	13
Denver Regional Office	OPCS Officer/Computer Spec	Career	12
Denver Regional Office	Admin Officer	Career	12
Denver Regional Office	Program Specialist	Career	12
Denver Regional Office	Program Specialist	Career	11
Denver Regional Office	Community Planner	Career	13
Denver Regional Office	East Team Leader	Career	14
Denver Regional Office	Program Specialist	Career	13
Denver Regional Office	EDR Colorado/Kansas	Career	13
Denver Regional Office	EDR Iowa/Nebraska	Career	13
Denver Regional Office	EDR Montana/Utah	Career	13
Denver Regional Office	West Team Leader	Career	14
Denver Regional Office	Program Specialist	Career	13
Philadelphia Regional Office	Regional Counsel	Career	15
Philadelphia Regional Office	Environmental Officer	Career	13
Philadelphia Regional Office	General Attorney	Career	14
Philadelphia Regional Office	Administrative Officer	Career	12
Philadelphia Regional Office	Adm Support Assistant	Career	5
Philadelphia Regional Office	EDR New York/VT	Career	13
Philadelphia Regional Office	Chief, Planning Technical Asst	Career	14
Philadelphia Regional Office	Community Planner	Career	13
Philadelphia Regional Office	Community Planner	Career	12
Philadelphia Regional Office	Community Planner	Career	12
Philadelphia Regional Office	Chief, Pubic Works	Career	14
Philadelphia Regional Office	Civil Engineer	Career	13
Philadelphia Regional Office	Sr. Program Specialist	Career	13
Philadelphia Regional Office	Civil Engineer	Career	13
Philadelphia Regional Office	Civil Engineer	Career	13
Philadelphia Regional Office	Public Works Program Spec	Career	12
Philadelphia Regional Office	Econ Dev Prog Spec	Career	12
Philadelphia Regional Office	Program Specialist	Career	9
Philadelphia Regional Office	Chief, Economic Adjustment	Career	14
Philadelphia Regional Office	Sr.Program Specialist (Financial Analyst)	Career	13
Philadelphia Regional Office	Program Specialist	Career	13
Philadelphia Regional Office	Program Specialist	Career	12
Seattle Regional Office	Regional Director	Career	(2)

ATTACHMENT 5.—ECONOMIC DEVELOPMENT ADMINISTRATION STAFFING CHART AS OF 3/20/2007—EMPLOYEES—Continued

Office	Positions	Appointment	Grade
Seattle Regional Office	Regional Counsel	Career	15
Seattle Regional Office	EEO/Civil Rights	Career	13
Seattle Regional Office	Administrative Officer	Career	12
Seattle Regional Office	Computer Specialist	Career	11
Seattle Regional Office	EDR Alaska	Career	13
Seattle Regional Office	Economic Development Specialist	Career	11
Seattle Regional Office	Chief, Economic Adjustment	Career	14
Seattle Regional Office	Economic Adjustment Specialist	Career	12
Seattle Regional Office	EDR/Oregon, Northern Cal	Career	14
Seattle Regional Office	EDR Pacific Islands	Career	13
Seattle Regional Office	EDR/Idaho and Nevada	Career	13
Seattle Regional Office	EDR/Central, Bay, CA	Career	13
Seattle Regional Office	EDR/Southern California	Career	13
Seattle Regional Office	EDR/Arizona	Career	13
Seattle Regional Office	Supv Community Planner	Career	14
Seattle Regional Office	Civil Engineer	Career	13
Seattle Regional Office	Civil Engineer	Career	13
Seattle Regional Office	Civil Engineer	Career	13
Seattle Regional Office	Public Works Specialist	Career	12
Seattle Regional Office	Public Works Specialist	Career	12
Seattle Regional Office	Public Works Specialist	Career	12
Total			161

[1] EX.
[2] SES.

ATTACHMENT 5.—ECONOMIC DEVELOPMENT ADMINISTRATION STAFFING CHART AS OF 3/20/2007—CONTRACTORS

Office	Positions	Funded by	Number
Office of Management Services	Accounting Technician	S&E	2
Office of Management Services	Human Resources [1]	S&E	2
Office of Information Technology	Information Technology	S&E	7
Total contractors funded by S&E funds			11
Contractors Funded by Other Sources of Funds:			
Seattle Regional Office	Community Planner	DOD Reimb Funds	1
Seattle Regional Office	Administrative Assistant	DOD Reimb Funds	1
Seattle Regional Office	Civil Engineer	DOD Reimb Funds	1
Seattle Regional Office	Program Specialist	DOD Reimb Funds	1
Seattle Regional Office	Environ Protection Specialist	DOD Reimb Funds	1
Total Other Fund Sources			5

[1] HR services previously provided under a cross-servicing agreement with ITA.

ESA HEADQUARTERS STAFFING AND FUNDING LEVELS

Question. Please provide a staffing and funding breakout for ESA Headquarters for fiscal year 2005, fiscal year 2006, fiscal year 2007 CR.

Answer. All ESA headquarters' appropriated staffing and funding are identified in the Economics and Statistical Analysis budget under the "Policy Support" heading.

ESA Headquarters	Fiscal Year 2005 Actual		Fiscal Year 2006 Actual		Fiscal Year 2007 Enacted	
	Personnel	Amount	Personnel	Amount	Personnel	Amount
Positions/Budget Authority	34	$6,316	23	$3,975	23	$3,975
FTE/Obligations	39	6,398	18	3,480	([1])	([1])

[1] TBD.

DYNAMICS OF ECONOMIC WELL-BEING

Question. Will there be a gap in continuity between the start of the Dynamics of Economic Well-Being and the end of the SIPP? If so, how long?

Answer. The Budget provides $15.9 million (an increase of $6.7 million over the 2007 Budget) to continue the development of the new Dynamics of Economic Well-being System (DEWS). However, to ensure Census can focus its efforts and be successful at fielding the new survey in 2009, the Budget does not include funding to continue SIPP data collection in 2008. Therefore there will be a short "data gap" between ending the SIPP and beginning of DEWS.

Data collection will end for SIPP in September 2007. We will have full data through May, partial data through August, and no data from September through December 2007. The first DEWS data collection will provide data for calendar year 2008. It should be noted that there have been gaps in the SIPP series before. For example, to enable the Census Bureau to initiate a new panel in February 2001 and process data more recently collected, data collected from February to September 2000 were never released and data from October 2000 to January 2001 were never collected. Based on those experiences and consultations with some of our Federal agency partners, we believe that a similar data gap between SIPP and DEWS should not hamper program evaluation or modeling.

IMPROVED MEASUREMENT OF SERVICES

Question. Please provide the complete funding requirements for the "Improved Measurement of Services" including any out-year requirements.

Answer. The Improved Measurement of Services initiative request for fiscal year 2008 is $8,118,000. We expect that a similar amount will be needed in the out-years, with adjustments for inflationary cost increases and other technical adjustments to base, providing for the continued quarterly and annual collection and dissemination of service industry data.

ITA EXPORT FEE INCREASE

Question. The budget request proposes to double a fee that the Subcommittee has rejected the last two years. Will the fee increase be a disincentive for exports at the very time we are trying to encourage them?

Please provide a schedule of current fees vs. those proposed under the request.

Answer. In 2006, ITA was involved with over 12,000 export success stories. Overall, exports from the United States are up over 2005. In fiscal year 2006, ITA assumed that it would collect $8 million in fees. ITA actually collected $7.9 million. We believe these fees could be managed better to free-up funding for ITA activities that provide the greatest benefit to the nation as a whole. ITA believes its services are important for potential exporters and will continue to contribute to the export boom.

ITA is working toward developing a fee setting strategy that will recover a slightly larger share of costs from companies that can afford it, while still encouraging SMEs to participate in the export market. The proposed fees will cover approximately 5 percent of the costs of the U.S. and Foreign Commercial Service (an increase from 3 percent in fiscal year 2007), and only about 3 percent of ITA's overall costs. The fees are targeted at services that provide benefits for specific firms, such as International Partner Searches, and Gold Key services. These services are most similar to those provided by private consulting firms.

In addition, ITA is developing novel partnerships with companies such as FEDEx and E–BAY, to name a couple, to expand the number of SMEs that export and those that export to more the one country. For example, FedEx is helping ITA to identify and inform U.S. exporters to Mexico about new business opportunities in Central America, which have come about as a result of recent Free Trade Agreements that the United States has signed with these countries. These private sector partners join ITA's traditional interagency partners, such as SBA, the Export-Import Bank, the Overseas Private Investment Corporation, and state and local governments in an effort to educate, inform and assist companies. These partnerships help achieve the government's and the private partners' goals of expanding foreign sales.

Below is a schedule of current fees. There are no proposed fees at this time.

	Current Fees
Products	
Business Facilitation Service	Variable depending on company requirements

	Current Fees
BuyUSA.gov Business Service Provider	International $150–$500 Domestic $250 Free for U.S. Companies
Commercial News USA	Revenue comes from advertising
Customized Market Research	Variable depending on company requirements
Featured US Exporters (FUSE)	$25–50
Gold Key—1st day	$685–$770 [1]
Gold Key—each additional day	$320–$385 [1]
International Company Profile (ICP)	$520–$810 [1]
International Partner Search (IPS)	$500–$790 [1]
Platinum Key Service	Variable depending on company requirements
Events	
Catalog Event/PLC	$450 and $650
Certified Trade Mission	Variable depending on company requirements
International Buyer Program	$8,000
Seminar-Webinar	Variable
Trade Fair	Variable depending on trade fair expenses and company requirements
Trade Mission	Variable depending on company requirements
Trade Promotion Event	Variable depending on company requirements
Single Company Promotion	Variable depending on company requirements
Certified Trade Fairs	$1,750

[1] The range of user fees charged for certain services reflects variations in the cost of doing business in different markets.

ITA CHINESE SUBSIDY PROGRAMS

Question. Please provide a funding summary of efforts to identify and analyze Chinese subsidy programs.

Answer. While ITA records maintain cost information for overall China enforcement efforts, it does not record separately its activities with respect to China subsidies for financial purposes. We can reasonably estimate that, between efforts in Washington, DC, and ITA's foreign offices in Asia, particularly Beijing, ITA devoted well over $1,000,000 to research, monitoring, consultation and advocacy regarding China subsidy issues during fiscal year 2006. During fiscal year 2007, we estimate that this amount could reach somewhere in the range of $1,500,000.

ITA ASSISTANT SECRETARY STATUS

Question. What is the status of the A/S for Manufacturing vacancy?

Answer. We are working closely with Personnel at the White House on this appointment and are making good progress. We are committed to filling this position as quickly as possible.

FUNDING FOR NOAA EDUCATION PROGRAMS

Question. Secretary Gutierrez, a few weeks ago you invited me to attend an event at a local Maryland high school to visit with students participating in the FIRST Robotics competition. From the interest you have shown in this program I know that you are keenly aware of the fact that we need to engage our young people I math and science programs.

What is the rationale for cutting the NOAA education programs by 50 percent?

Does the Department of Commerce believe in the NOAA education mission?

Answer. NOAA's fiscal year 2008 budget maintains NOAA's education spending at the fiscal year 2007 President's request level. The Department of Commerce strongly believes in NOAA's educational mission and we believe that NOAA can make considerable progress toward its goal of developing an ocean literate population at the requested funding level. In order to produce a society well versed in ocean-related issues, it is vital that NOAA establishes a strong foundation of knowledgeable students who will later move into the general population. The programs included in the fiscal year 2008 budget (see Table 1) all contribute to this goal.

TABLE 1.—EDUCATION PROGRAMS INCLUDED IN PRESIDENT'S FISCAL YEAR 2008 BUDGET REQUEST

Program	Fiscal Year 2008 President's Request
Educational Partnership Program	$14,261,000
Hollings Scholarship	3,700,000
JASON	1,000,000
Nancy Foster Scholarship	400,000
Total	19,361,000

Examples of each of these successful NOAA programs are highlighted below:

The JASON Project uses multimedia tools and cutting-edge technology to engage middle-school students in scientific research and expeditions led by leading scientists. Dr. Bob Ballard has transmitted his discoveries to millions of students in classrooms around the country, via satellite and internet broadcasts. The JASON Project also provides on-site and on-line teacher professional development supported by the National Science Teachers Association and the U.S. Department of Education's Star Schools Program.

NOAA's Educational Partnership Program began in 2001 and provides financial assistance, on a competitive basis, to Minority Serving Institutions (MSIs) to increase programs and opportunities for students to be trained and graduate in sciences that directly support NOAA's mission. The program consists of four core components: Cooperative Science Centers, Environmental Entrepreneurship Program, Graduate Sciences Program and the Undergraduate Scholarship Program.

—Five Cooperative Science Centers have been designated at MSIs with graduate degree programs in NOAA-related sciences. To date, NOAA has provided formal training and research opportunities for 2,050 students at these centers. External teams of scientists have reviewed the centers to determine the effectiveness of student recruitment, training and graduation. Program statistics have consistently exceeded performance measures with over 383 students graduating with bachelors and advanced degrees in NOAA-related sciences. Of those students, 33 have received Ph.D.'s and 105 students have been awarded Masters Degrees. Another 94 Ph.D. candidates and 126 Masters candidates are expected to receive advanced degrees within the next three to five years.

—The Environmental Entrepreneurship Program provides financial assistance to increase the number of students at MSIs who are proficient in both environmental studies and business enterprises. The Program facilitates linkages between MSIs, NOAA and the private sector.

—The Undergraduate Scholarship Program has trained 84 students majoring in NOAA-related sciences at MSIs. Of these, 69 students have completed the program and 15 are finishing their second year of training. Twenty-eight of the students that have completed the program have been accepted into graduate programs.

—The Graduate Sciences Program offers training and work experience to exceptional female and minority students pursuing advanced degrees in the environmental sciences. After completing the program, participants commit to employment at NOAA based upon the length of their training. To date, the Graduate Sciences program has hired 32 graduates as NOAA scientists.

The Dr. Nancy Foster Scholarship Program, named in honor of the late distinguished NOAA scientist and Assistant Administrator, recognizes outstanding scholarship and encourages independent graduate level research—particularly by female and minority students—in oceanography, marine biology and maritime archaeology. Congress authorized the Program, as described in the National Marine Sanctuaries Amendments Act of 2000, soon after Dr. Foster's death in June 2000, as a means of honoring her life's work and contribution to the Nation. To date, 22 students have received scholarships, 18 of whom are women.

The Ernest F. Hollings Scholars Program recruits and prepares students for public service careers with NOAA and other natural resource and science agencies as well as for careers as teachers and educators in oceanic and atmospheric science. Last year, the first Hollings Scholars successfully participated in summer internships with NOAA labs and facilities. The Hollings Scholarship Program currently funds more than 100 students in ocean and atmospheric sciences, math, computer science, social science and education.

As indicated above, the Department supports education programs at NOAA and is requesting over $19 million in fiscal year 2008 for education programs and activities.

UNITED STATES PTO PATENT BACKLOG

Question. What is the current backlog of patents?

Answer. The backlog (cases that have not been examined) of patent applications at the beginning of fiscal year 2007 was 701,000. As noted in the 2007–2012 Strategic Plan, the rate at which patent applications are being filed has increased beyond the rate at which the USPTO is presently able to examine them. It is possible that this backlog could approach 1.4 million by 2012.

We are currently employing the following strategies to address backlogs:

—Enhance recruitment to hire 1,200 new patent examiners a year for an extended period of time, including examiners with degrees and/or experience in areas of emerging technologies.

—Expand telework and explore establishing regional USPTO office.

—Competitively source PCT Chapter 1 applications, freeing examiners to focus on national cases.

—Explore examination reform through the rule making process to create better-focused examination and enhance information exchange between applicant and examiner.

LONG-TERM METRIC/GOAL FOR PATENT PENDENCY

Question. What is the agency's long-term metric/goal for patent pendency?

Answer. Our long-term, strategic goal for patent pendency[1] is 28 months to final disposition, by 2012.

Metrics include reduction of the initial waiting time for patent applications in our most backlogged Technology Centers and successful implementation of various initiatives that ensure goal achievement by 2012.

The USPTO is both implementing initiatives and exploring strategies that will reduce the backlog of unexamined patent applications and improve the timeliness of a patent examination.

An important set of options—important because they would have a significant, long-lasting positive effect on timeliness of patent examination—might require legislation. Therefore, we are grateful to the Subcommittee for its interest in the topic of patent pendency, as we believe faster processing of patent applications is crucial to America's Competitiveness.

RETENTION RATE

Question. What is the current staff retention rate?

Answer. The USPTO typically reports an attrition rate rather than a retention rate. In 2006 the USPTO's examining staff had an attrition rate of 10.6 percent. In contrast, the U.S. Department of Labor, Bureau of Labor Statistics reported a total government separation rate of 16.9 percent for 2006.

INCREASE EXAMINER RETENTION

Question. Beyond recruitment and retention bonuses, how is PTO working to increase examiner retention?

Answer. In addition to providing eligible examiners a market-driven recruitment bonus for up to four years with a condition of employment agreement, the USPTO has identified a number of initiatives that would improve retention:

—The Office is forming teams of hiring coordinators with specialized technology-specific and human resources and recruiting skills to attract candidates for hard to fill examining positions, particularly those most likely to stay at the USPTO.

—Another way of attracting candidates who most likely would remain at the USPTO is to use personal interaction at college and regional job fairs to educate candidates about the exact nature of the job.

—The on-going Patent Hoteling Program (PHP), which was launched in 2006 with 500 examiners, will be expanded by 500 examiners a year through fiscal year 2010.

—PH is a voluntary program whereby participants can remotely access USPTO automated system, on-line resources, and other information from an alternative worksite. They also can remotely reserve office space one day per

[1] Patent pendency is the amount of time a patent application is waiting (in queue) before a patent is issued or the application is abandoned.

week in a "hotel office suite" located at USPTO headquarters to conduct in-person business activities.

—On a more long-term basis, we hope to create, with Congressional support and legislative authority, a workplace that can be anywhere. In this regard, three possibilities are being investigated by Patents: (1) expanding the successful Patents Hoteling Program (PHP) in such a way as to create a more nationwide workforce; (2) creating remote or regional offices, or brick and mortar presences, in different locations across the country selected upon a variety of factors such as where pockets of technology may be concentrated or there is increased access to a suitable workforce for hire; and (3) a storefront approach which in a sense is a hybrid of the possibilities (1) and (2). The storefront approach would potentially provide a small-scale brick and mortar presence, or node, which could then act as a support center for employees participating in an expanded hoteling program.

—The USPTO plans a multi-pronged approach to provide enhanced training programs for patent employees—both new employees and mid-career and senior examiners.

—The Office also plans to develop alternatives to the current performance and bonus systems, for example, the Patent Flat Goal pilot program, which is designed to improve flexibility as to when and where examiners perform their work.

—Patent examiners received a 7 percent special pay rate increase in November 2006.

—In 2006, USPTO management submitted proposals to patent union representatives for a new collective bargaining agreement that would replace a previous agreement negotiated in 1986. Proposals include enhanced patent examining monetary awards and production activities, as well as a stand-alone quality award.

TIMELINE FOR ACHIEVING STRATEGIC PLAN GOALS AND OBJECTIVES

Question. In December, PTO submitted its latest 5-year strategic plan to OMB. The plan lists four goals: Optimizing Patent Quality and Timeliness; Optimizing Trademark Quality and Timeliness; Improving Intellectual Property Protection; and Achieve Organizational Excellence.

What is your timeline for achieving the goals and objectives of the plan?

Answer. The 2007–2012 Strategic Plan proposes consideration of substantial changes for patents, trademarks, intellectual policy and management that will better position the USPTO and its users for future growth and complexity. The Plan also documents our belief that partnership with stakeholders is crucial to defining, in a collaborative manner, solutions that will benefit the entire IP system.

The Strategic Plan specifically identifies and describes more than 60 initiatives for achieving the goals and objectives in the Strategic Plan. Some of these initiatives already are under way or have specific timeframes, while others commit us to continue researching and exploring options to solve specific problems.

—For example, one alternative that is under way is the Patent Flat Goal pilot program. This pilot is designed to improve flexibility as to when and where examiners perform their work.

—Another example is the initiative to competitively source Patent Cooperation Treaty (PCT) Chapter I applications. As an International Searching Authority under the PCT, the USPTO is obligated to perform this search function. By competitively sourcing this function, the USPTO will redirect patent examiner resources back to the examination of U.S. applications. Two contracts were awarded last fiscal year to initiate this program. In addition, the USPTO entered into agreements with IP Australia to perform search and examination work on PCT applications. Initially, the USPTO expects to competitively source up to 15,000 Chapter I applications.

—In addition, we have identified a broad objective to explore the development of alternative approaches to patent examination in collaboration with stakeholders.

—The USPTO is planning a pilot program for peer review of patent applications. Up to 250 applicants whose applications are in the computer architecture, software and information security technologies will be able to voluntarily place their applications on a non-USPTO web site for public review by a peer group of patent users, attorneys and academics. This peer group will determine and submit to the USPTO what they consider the best available and relevant prior art. The pilot will test whether this peer review can effectively identify prior art that might not otherwise be found by our examiners during the typical ex-

amination process. We will also make an evaluation as to whether this process results in measurable examination timesaving and quality improvement.

—We also are developing a plan to reach out to the entire patent community to ensure their ideas are adequately represented and considered. The Patent Public Advisory Committee (PPAC) would assist in this process by gathering information and making recommendations to improve the patent system to the USPTO. A proposed process has been developed for gathering input and proposals for improving the patent examination system by bringing together the diverse external patent community to identify patent examination products or services that may result in the more efficient use of examination resources. The process would strive to identify a wide range of ideas from those needing statutory changes to those that can be implemented immediately under our existing authorities.

—The USPTO is developing and reviewing a variety of innovative patent processing initiatives including a new offering for the public called "Accelerated Examination." Under this program, which began August 26, 2006, for those applicants who need or want quick turn around, the USPTO offers a complete examination within 12 months. In exchange for this quick turn around, applicants must file a complete application, agree to interviews and accelerated response periods, must file and prosecute their application electronically and must provide more information about the application to the USPTO in the form of an examination support document. The first application to be completed under this program was filed on September 29, 2006 and issued on March 13, 2007 (less than 6 months from date of filing).

—We believe that to effectively address and control pendency and reduce backlog, the USPTO needs to receive more and better focused information from applicants themselves and from the public at large. The USPTO has proposed and will propose regulations and administrative changes governing submission of patent applications that will enable our examiners to make more efficient and informed determinations.

—First, we have proposed limiting the number of continuing applications and continued examination requests to provide an incentive for applicants to focus their initial patent applications on their inventive contributions.

—Second, we have proposed to limit the number of claims that are initially examined in order to provide an incentive to focus the examination process.

—The first and second proposals have optional procedures which continue to provide an applicant flexibility where the applicant may need additional continuing applications or initially examined claims upon a showing of that need or by shouldering additional responsibilities. In parallel we have proposed revisions to our information disclosure requirements to focus our limited examination recourses on prior art that is most relevant to the examination process. Additionally we are considering a new practice change to require applicants to conduct a pre-examination search and provide an explanation as to why they believe that they are entitled to a patent in view of the information discovered during the pre-examination search.

—Our hope is to achieve examination reform that creates better-focused examination and enhances information exchange between applicant and examiner. We look forward to working with the public and Congress to develop an enhanced examination system that effectively and fairly balances the needs of the Office and the interests of the patent applicants, interested third parties and the general public.

—While the USPTO currently has a procedure for submission of prior art after publication, which allows submission by third parties within two months of publication, the procedure does not allow explanations or other information about the patents or publications absent express written consent of the applicant. We encourage consideration of a change to the statute governing this procedure to allow filing of relevant information by third parties after pre-grant publication. Such a change would allow those interested parties to explain why the prior art would have a negative impact on the patentability of the claims. This process, which would provide the examiner with information he or she might not otherwise obtain, should result in a more efficient examination process and a higher quality, more reliable patent. Putting the best and most complete information before our examiners, as early in the examination process as possible, is beneficial to the legitimate interests of all interested parties and stakeholders.

—We look forward to working with Congress to develop a submission procedure that effectively and fairly balances the interests of the patent applicant, interested third parties and the general public.

—We are also looking to provide assistance to the open source community in their development of an open source database to provide examiners with potential prior art.
—Trademarks expects to achieve 3-month first action pendency by 2008 and maintain it thereafter. Trademarks also expects to reduce disposal pendency to 16 months by 2009 and maintain it. Our challenge will be to maintain performance goals given the uncertainties of filings and funding. The Strategic Plan addresses improvements in the criteria used to define quality as well as expanding quality assessments throughout the office.

In conclusion, we consider the Strategic Plan to be a work in progress, and we will refine and update it regularly to adjust to changing conditions and to incorporate the best thinking of the intellectual property community and beyond. Our budget and performance plan that is submitted to the Congress each year will document key measurements and yearly milestones to justify full funding for the Office in achieving our strategic goals.

PATENT EXAMINATION QUALITY

Question. How does the PTO measure patent examination quality?

Answer. Quality begins with the fundamentals—a high-performing workforce that is properly trained and given the tools and information technology systems needed to accomplish the job. Furthermore, the USPTO monitors quality quite precisely by measuring:

—In-process compliance with published statutory, regulatory, and practice standards;
—End-of-process compliance with these same standards.

These parameters are measured by performing a review of statistically significant random samplings of examiners' work products.

Since we put additional quality initiatives in place in 2003, our compliance rates have increased.

In fiscal year 2006, we achieved a 96.5 percent patent allowance compliance [2] rate the highest in 25 years, while receiving a historically high number of patent applications (419,760).

WORK WITH USER COMMUNITY TO EVALUATE QUALITY

Question. Is the PTO working with the user community to evaluate whether the right measures are being used to evaluate quality?

Answer. As part of the 2007–2012 Strategic Plan, we will continue to work with all interested parties to find new ways to improve and measure quality even more effectively.

The USPTO plans to keep developing appropriate measures of patent quality and related performance targets given the current patent examination system. We will engage the patent community about developing objective review criteria that can be applied in all review processes. By doing this, we will create more consistent and credible measurements of quality.

TECHNOLOGY ADMINISTRATION STAFFING AND UNOBLIGATED BALANCES

Question. Please provide the current on-board staffing levels for TA.

Answer. As of March 14, 2007, the on-board staffing levels for TA are 7 consisting of 6 full-time permanent employees and 1 excepted service employee.

Question. Please provide the fiscal year 2006 end-of-year unobligated balance for TA.

Answer. The fiscal year 2006 end-of-year unobligated balance for TA was $443,000.

MEP FUNDING LEVELS

Question. Please provide the analysis behind the $46.3 million funding level request for the MEP?

Answer. We believe that the proposed budget would achieve these specific Federal objectives:

—Ensure that MEP continues to develop and provide all the centers up-to-date skills and techniques;
—Ensure standards of quality are met and maintained at every center receiving Federal funding; and

[2] Compliance rate is the percentage of applications allowed by patent examiners with no errors after being reviewed by the Office of Patent Quality Assurance.

—Ensure that centers focus on offering services to the small manufacturers in their areas, rather than large firms.

In a tight budget environment, we need to ensure that we are funding the highest priority programs. The President's request for the National Institute of Standards and Technology (NIST) will ensure that funding goes to basic research—especially in the areas of physical sciences, engineering, computing, and nanotechnology—that is vital to the Nation's innovation enterprise and manufacturing. NIST meets these priorities by focusing on high impact research and investing in the capacity of NIST's user facilities and labs. This emphasis is validated by the high rate of return to the Nation that the NIST labs already have demonstrated. Nineteen retrospective studies of economic impact show that, on average, NIST labs generated a benefit-to-cost ratio of 44:1 to the U.S. economy. The high rate of return results from the fact that new measurements or standards benefit entire industries or sectors of the economy—as opposed to individual companies. The MEP program is just one method by which NIST supports small manufacturers. NIST laboratory activities are geared to enhancing the Nation's manufacturing base, provide more of a true public good, and are a better use of scarce Federal funding.

The fiscal year 2008 budget request would encourage MEP Centers to be more efficient by reducing their overhead costs, including marketing costs. Given the benefits reported by MEP clients, centers could also ask MEP clients to cover more of the cost of the services through increased fees.

Question. How would NIST implement the program at $46.3 million?

Answer. The MEP Director will work with the centers to develop options that consider each center's customer base, constraints, and opportunities. Actions taken by any center or group of centers will be assessed against their ability to maintain support to the small manufacturers. MEP will work with the centers to examine alternatives and optimize the best plan for operating at the $46.3 million level that ensures the maximum benefit to small manufacturers.

NTIA'S APPROPRIATION LANGUAGE

Question. Please provide a brief summary of the status of each of the mandatory spending programs funded through the Digital Television Transition and Public Safety Fund.

Answer. The Deficit Reduction Act of 2005, Public Law 109–171, (Act) provides borrowing authority for four programs that are the current focus of the Department of Commerce's National Telecommunications and Information Administration (NTIA).

Digital-to-Analog Converter Box Program (Sec. 3005 of the Act)

Congress directed NTIA to implement and administer a program through which eligible U.S. households may obtain up to two coupons of $40 each to be applied towards the purchase of digital-to-analog television converters. NTIA issued its Final Rule to implement the Coupon Program on March 9, 2007. The rule, which is available on NTIA's website at www.ntia.doc.gov, describes how consumers may obtain and use coupons, outlines retailer participation, and provides detailed specifications for manufacturers who wish to produce converters to be eligible for purchase with coupons.

NTIA held a public meeting on March 19 to review the Final Rule in detail and to answer any questions. The meeting was the first of several periodic meetings NTIA will hold to communicate with the public and leverage a wide range of private sector, nonprofit, and governmental partners in disseminating information about the Coupon Program and the digital transition.

NTIA intends to enter into a contract for services to administer the Coupon Program through a separate program acquisition. On July 31, 2006, NTIA issued a Request for Information to initiate market research for the contract. Interested vendors attended an Industry Day on August 11, 2006, and submitted information to NTIA on September 15, 2006. NTIA released the Request for Proposals ("RFP") on March 13, 2007. NTIA held a Bidder's Conference on March 26, 2007. Offerors will respond to this RFP by April 30, 2007. The procurement schedule anticipates that a contract will be awarded by August/September 2007 and the period of performance will start some months later.

The voluntary participation of consumer electronics retailers and manufacturers is crucial to the success of the Coupon Program. Business considerations, however, will ultimately guide the retailers and manufacturers in deciding whether they will produce and market converter boxes through the Coupon Program. NTIA, through its rules and administration of the program, is making every effort to encourage participation and support from these industries.

NTIA has taken suggestions from manufacturers and broadcasters to establish technical specifications for converters that will ensure the availability of low-cost, reliable converters based on today's state of the art technology. NTIA set minimum specifications and features for converters that are "required" but also identified features and specifications that are "permitted." Pursuant to the statute, NTIA's Final Rule also provides examples of "disqualifying" features such as built-in DVD capability.

NTIA has addressed retailers' concerns about a range of topics such as the timing of payments to reimburse them for coupon redemption, requirements for stocking and managing converter inventory, training requirements, and promotion and marketing of converters. NTIA's retailer certification program will minimize incidents of waste, fraud and abuse. Retailers will be part of the Federal Government's Central Contractor Registry (www.ccr.gov) and will agree to have electronic systems in place to track coupon redemption activity. NTIA will provide training materials for retailers and maintain lists of certified retailers.

NTIA's consumer education efforts will succeed only with the help of the broadcasters, consumer electronics manufacturers and retailers, and several key consumer and public outreach organizations. NTIA is a key participant in the Digital Television Transition Coalition (www.dtvtransition.org) which was recently launched to ensure that no consumer is left without broadcast television due to a lack of information about the transition. NTIA will work with intermediary groups representing vulnerable populations—rural residents, economically disadvantaged, minorities and seniors—to get the word out through broadcast stations, newspapers, advertisements, the Internet and other outlets that serve these communities. NTIA will also work with other agencies, such as Food Stamps, SSI, and Veterans Affairs—as well as state, county and local associations—to reach consumers directly through mail stuffers alerting households to the Coupon Program.

Public Safety Interoperable Communications Grant Program (Sec. 3006 of the Act)

The Act establishes a $1 billion grant program to assist public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that utilize, or enable interoperability with communications systems that can utilize, reallocated pubic safety spectrum in the 700 MHz band for radio communications. NTIA does not view this language to limit the grant funds only to 700 MHz systems investments. Rather, NTIA is committed to exploring the use of all available technologies to advance overall public safety interoperability, as long as those technologies will enable first responders to interoperate with the 700 MHz bands in the future. The Call Home Act of 2006 directs NTIA, in consultation with DHS, to award the grants no later than September 30, 2007.

On February 16, 2007, the Department of Homeland Security (DHS) Office of Grants and Training and NTIA signed a Memorandum of Understanding (MOU) through which DHS will provide NTIA with grants administrative services to assist in the administration of the Public Safety Interoperability Communications (PSIC) Grant Program. The program schedule has been developed to meet the statutory requirements and deadlines as well as to create an effective PSIC Grant Program.

The Program will make grants to eligible public safety agencies through the State Administrative Agencies in the 56 States and Territories. In mid-July 2007, PSIC grant awards will be made and jointly announced by NTIA and DHS, and the grant guidance, application kits, and eligibility requirements will be released. PSIC funds will be allocated using a modified version of the DHS risk methodology.

Up to five percent of the total grant for each State and Territory will be disbursed to ensure that their Statewide Interoperable Communications Plans (Statewide Plans) include consideration of PSIC requirements. No later than November 2007, States and Territories will submit their final Statewide Plans and an investment justification outlining how the PSIC funds will be used to meet the PSIC requirements consistent with their Statewide Plans. Once the Statewide Plans, applications and investment justifications are reviewed and approved, the PSIC funds will be disbursed to States and Territories to pass through to eligible public safety agencies. Projects must be completed by September 30, 2010.

The PSIC Grant Program will be designed to complement funds that have been awarded through other grant programs—such as the Homeland Security Grant Program and the Infrastructure Protection Program—that include interoperable communications funds. The program guidance and application process will emphasize leveraging grants, contracts or state/local budgets to build and sustain intrastate and interstate regional capabilities and identified needs.

New York City 911 Digital Transition (Sec. 3007of the Act)

The Act directs NTIA to reimburse the Metropolitan Television Alliance (MTVA) up to $30 million for costs associated with the digital television transition. MTVA, a consortium of New York City area television stations, formed when the television stations' digital and analog transmission facilities were destroyed in the collapse of the North Tower of the World Trade Center. This funding will assist MTVA in the design and deployment of a temporary digital television broadcast system to ensure that, until a permanent facility atop the Freedom Tower is constructed, the stations can provide digital television service to the New York City area.

NTIA has been working with MTVA since June 2006 in the preparation of an application for this funding and to ensure that MTVA will be able to comply with federal funding requirements. The application process has been completed and the grant was announced on March 21 2007. NTIA is awarding $7,855,000 for fiscal year 2007 to MTVA for the first phase of the project that will design and test the technology for a distributed transmission system at three of five sites in the New York City metropolitan area. Based on the results of these test sites, MTVA anticipates requesting $21,645,000 for reimbursement in fiscal year 2008 to complete the full 20-site system in the New York City metropolitan area. This will ensure operation prior to the digital television transition deadline of February 17, 2009.

Low-Power Television and Translator Digital-to-Analog Conversion (Sec. 3008 of the Act)

The Act establishes a $10 million program to compensate each low-power television station for the purchase of digital-to-analog conversion equipment to enable the conversion of an incoming digital signal from its corresponding full-power television station to analog format for transmission on the low-power station's analog channel. Funds are to be made available to these organizations in fiscal year 2008. Approximately 10,000 facilities are eligible for this support.

NTIA plans to work closely with the low-power television and translator communities to ensure that this $10 million program effectively assists these communities as the February 2009 deadline approaches. NTIA is currently reviewing technical issues necessary to draft program guidance and application guidelines, which it expects to issue later this year.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

ITA WESTERN HEMISPHERE TRAVEL INITIATIVE

Question. I have serious reservations with the manner in which the Departments of Homeland Security (DHS) and State (State) have pushed forward with implementation of the Western Hemisphere Travel Initiative (WHTI) before the necessary technology installation, infrastructure upgrades, and training takes place at our border stations. If these critical features of the deployment are not in place, I am afraid we will see severe delays at our border and law-abiding citizens from the United States, Canada, and Mexico will have great difficulty moving between our countries. Most importantly, a hasty implementation without assurances that the technology to be used is truly effective will result in a less secure border.

Since Canada is such an important trading partner and friendly neighbor to the United States, it clearly is in the best interest of both of our countries to keep those relations as positive and productive as possible. To that end, we all know that there is a dynamic relationship between commerce and security, and we constantly need to balance the two.

Has your agency conducted or been asked to conduct any economic impact analysis for how WHTI is going to affect communities along our Northern Border?

If not, could you please provide for the Subcommittee your best estimate as to the economic impact that the WHTI would have on (a) the states along the Northern Border, and (b) the U.S. economy?

Answer. While Commerce has not conducted, nor has it been asked to conduct, an analysis of WHTI's regional or national economic impact, the following data is provided for consideration.

Currently, Canadian and Mexican travel to the USA has a dramatic impact on the country. In 2006, Canada became the second largest market for U.S. travel exports ($13.5 billion). Canada is still the largest generator of arrivals to the United States, with 16 million visitors staying one night or longer.

Mexico is the fourth largest travel export market for the United States ($9.2 billion), and the second largest visitor market for the USA, setting records for arrivals and travel exports in 2004–2006. Since 2000, Canada and Mexico have been the

only countries to post increases in arrivals among the top six arrival markets for the country.

Commerce is working with the Departments of Homeland Security and State and with the industry to try to minimize any negative impact WHTI may have in travel and tourism. For example, discussions have taken place on developing a pass card between the USA and Canada; the passport requirement was changed to exempt children under 16; and a communication effort was implemented by industry and DHS to inform travelers of the WHTI changes.

As the U.S. Government moves into the second wave of implementation (land border and cruise), Commerce will work closely with the Department of Homeland Security to ensure clear communications with potential travelers. Travel flows between the countries will continue to be reported on a monthly basis by Commerce's Office of Travel and Tourism Industries.

WESTERN HEMISPHERE TRAVEL INITIATIVE

Question. I was troubled to learn that the DHS may have prematurely endorsed one PASS Card technology over another without first securing the required National Institute of Standards and Technology (NIST) certification of the card architecture and then notifying Congress. The law clearly states that the NIST must certify, prior to implementation, "that the Departments of Homeland Security and State have selected a card architecture that meets or exceeds International Organization for Standardization security standards and meets or exceeds best available practices for protection of personal identification documents." By unilaterally moving forward with vicinity-read technology, the DHS would be choosing an insecure technology that has not been proven effective at ensuring privacy protection, and it would be necessitating the installation of new technological infrastructure at every U.S. land and sea port of entry.

Has NIST begun its analysis into the WHTI-related technology issues, as called for in the fiscal year 2007 Homeland Security Appropriations Bill?

Answer. After passage of the statute (Public Law 109–295), NIST immediately began to work with the Departments of State and Homeland Security in order to identify appropriate standards and best available practices that relate to the security aspects of the card architecture, for the technology chosen jointly by State and DHS. NIST has engaged in extensive discussions with the technical staff of those departments, and has provided a set of requirements for certifying the security of the PASS Card architecture.

Question. If so, when do you estimate the NIST will complete its analysis?

Answer. NIST has advised State and DHS that certification would be done within four weeks of receiving the draft Request for Proposal (RFP) from State, and prior to the release of the final RFP. This is to ensure that the RFP accurately reflects the set of requirements identified by NIST so that the selected card architecture meets or exceeds International Organization for Standardization (ISO) security standards and meets or exceeds best available practices for protection of personal identification documents. This commitment presumes that State and DHS continue to work with NIST in their drafting of the RFP. That has been the case to date.

Question. Once complete, how does your agency plan to release and certify the results?

Answer. Certification by NIST would be by a letter from the NIST Director to the appropriate individual(s) at State and/or DHS noting that the test protocols in the RFP verify that the card architecture meets or exceeds ISO security standards and meets or exceeds best available practices for protection of personal identification documents for the chosen technology.

Question. Do you see a difference between NIST certifying the procurement of the technology and certifying the feasibility of the technology? If so, please explain.

Answer. NIST will be neither certifying the procurement of the technology nor the feasibility of the technology. Our certification will be focused on the specification of the statute: that NIST certify that DHS and State "have selected a card architecture that meets of exceeds International Organization for Standardization (ISO) security standards and meets or exceeds best available practices for protection of personal identification documents." We will be conducting this certification via ensuring that the set of requirements identified by NIST in compliance with the statute are embodied in the Request for Proposals that define the compliance requirements for industry.

Question. Have you or employees in your agency been under any pressure to reach a preordained conclusion or hurried certification in this matter?

Answer. NIST has not been under any pressure to reach a pre-ordained conclusion or hurried certification.

MEP PROGRAM

Question. I understand that the National Institute of Standards and Technology (NIST) recently announced its intention to re-compete the MEP system beginning in April 2007, and then quickly drew back that proposal. I strongly disagree with any re-competition proposal because of the disruption it would cause to the national MEP infrastructure and the good work accomplished daily by the Vermont Manufacturing Extension Center. On top of that, the President's request of $46.3 million is not an appropriate level of funding for this valuable program dedicated to serving our nation's smaller manufacturers.

For the past six years, a bipartisan majority of the Congress has fully supported the MEP program despite the annual ritual of deep cuts proposed by the President. This support stems from the successful performance demonstrated by centers nationwide in ensuring the sustainability of our domestic small manufacturing industry and its high-quality jobs.

With the fiscal year 2008 congressional budget and appropriations processes just beginning, I believe it would be inappropriate for the Bush administration to disrupt, re-compete, or restructure the MEP program based on its own proposed budget proposal for the coming year. On top of that, any such actions during fiscal year 2007 would be inconsistent with Congress' intention for those funds.

In light of the recent announcement by the NIST that it will not re-compete the program in April, I ask the following questions of Secretary Gutierrez and Director Jeffrey:

What factors, considerations, or conversations made you change your mind in the eleven days that passed between your February 15 re-competition announcement and your February 26 announcement that the re-competition would cease?

Answer. The proposed re-competition was intended as a contingency to ensure the strongest network possible regardless of final appropriations. To conduct such a competition would take approximately 5–6 months, which is why we initially looked towards late spring of 2007 to initiate the process. This would provide us the necessary data to make informed decisions at the beginning of fiscal year 2008—once the fiscal year 2008 enacted budget was known. Based upon inputs from the MEP Center Directors, Congressional Members and Staff, and others it became clear that the process of the re-competition would be disruptive to current Center operations. We, therefore, decided not to hold this re-competition.

Question. This is not the first time you have tried to re-compete the MEP program, as you attempted to mount a re-competition less than three years ago.

Now that you have changed course again, can you assure us that you will not attempt a re-competition for a third time in 2008? If you cannot make this affirmation, under what circumstances, and with what policy objectives, can you envision proceeding down the re-competition path again?

Answer. We cannot make that definitive affirmation. The goal of MEP is to support the Nation's small manufacturers. The MEP program will therefore examine all possible alternatives to most effectively achieve that goal given any enacted budget level.

Question. In your written testimony, you state, "The reduction of Federal funds to the local centers may have to be compensated through a combination of increased fees derived from the benefits accrued by individual companies and cost-savings in the operations of the centers."

Please explain what data or reports you have to support that increased fees from the benefits accrued by companies and cost savings in the operation of the centers are possible.

Answer. The annual reported benefits by manufacturing clients of the MEP Centers conducted through an independent survey demonstrates a significant level of cost savings and efficiency improvements for the MEP clients. For example, the latest MEP client survey results (released January 2007 and reflecting fiscal year 2005 benefits) demonstrate that MEP helped 16,448 clients create and retain 53,000 jobs; increase and retain sales of nearly $6.3 billion; and generated cost savings of just over $1.3 billion (both recurring and non-recurring). These impacts resulting in reduced costs and potentially increased profits for the client could be used to support increased fees for future services. With increased revenues streams from client fees, MEP centers may offset, in whole or in part, the reduction in Federal funds.

Question. I understand that you may be considering the creation of regional innovation centers across the country.

Are you considering this idea? If so, how do you envision the constitution of these centers? What role would the MEP play in this plan?

Answer. MEP has no plans to develop regional innovation centers.

Question. Has the NIST consulted with its state partners to ensure that state governments, which provide cost share to these programs, are comfortable with their state resources being used across state boundaries? If so, please describe the reaction of these state partners.

Answer. MEP has no plans to develop regional innovation centers. MEP routinely consults with its state partners on programs priorities and alignment with state initiatives.

Question. The MEP system is an effective, economic development program that has generated results, created and retained jobs, and leveraged local partnerships. In fiscal year 2005 alone, as a direct result of MEP services, clients reported more than $6.25 billion in new and retained sales, $1.304 billion in cost savings, $2.248 billion in client investment in modernization, 17,453 jobs created, and 35,766 jobs retained. Thus, it appears that MEP returns far exceed the initial investment.

What is your plan for building on this proven resource to produce even greater results for American manufacturers and workers?

Answer. MEP will build upon our foundation of process improvements with clients to develop innovation and growth services that will position U.S. manufacturers to meet the increasing demands of the global marketplace. A key focus will be providing manufacturers with access to the technologies needed for the development of new processes and innovative products.

We also will focus on supplier development since small manufacturers are such a crucial part of the supply chain.

Question. It is no secret that one of the biggest challenges facing small American manufacturers is competition from low-cost overseas producers. As large Original Equipment Manufacturers seek the best, fastest, and cheapest suppliers, they are increasingly looking overseas. Even our major defense contractors are purchasing more from overseas suppliers, putting our Nation in the position of depending on parts from other countries to equip our troops.

Have you contemplated using the MEP system to strengthen our domestic suppliers so that we can preserve jobs in the United States and keep more defense suppliers in this country? If not, would you consider undertaking that evaluation?

Answer. MEP has already been working with domestic defense suppliers and manufacturers by providing technical assistance and training to improve productivity, reduce costs, and develop a highly-skilled workforce. The small manufacturers that MEP Centers have worked with are crucial to a robust defense supply chain. The strengthening of this supply chain should help keep critical defense supply and manufacturing jobs in the United States.

Specific projects within the aerospace and ship building industries have resulted in connecting small machining companies with Defense acquisition opportunities and creating groups of engineering and manufacturing companies that work collaboratively to supply critical defense equipment and parts.

QUESTIONS SUBMITTED BY SENATOR HERB KOHL

MEP DEFENSE SUPPLIERS

Question. It is no secret that the biggest challenge facing small American manufacturers is competition from low-cost overseas manufacturers. As large manufacturers seek the best, fastest, and cheapest suppliers, they are increasingly looking overseas. With great success, the Wisconsin MEP center has worked with large manufacturers like Oshkosh Truck, Harley Davidson and John Deere on a supplier development model to keep jobs at home.

So far, the Wisconsin MEP has trained MEP centers in sixteen states, proving there is a strong need for this training nationally.

Mr. Jeffrey, can you develop a plan based on the Wisconsin model for using the MEP system to strengthen our domestic suppliers so that we can preserve jobs in the United States and keep more suppliers in this country?

Answer. The Wisconsin MEP Supplier Development model addresses several components of the supply chain issues faced by manufacturers. The Wisconsin model and the positive impacts realized by manufacturers have been presented at several MEP quarterly meetings making more centers aware of the approach. Within the past year, fifteen other MEP Centers have participated in or employed the model assisting 123 small and medium-sized suppliers in states, such as Illinois, Indiana, Iowa, Missouri, Minnesota, Ohio, Pennsylvania, and Texas.

MEP AND ENERGY COSTS

Question. When I talk to manufacturers in Wisconsin, they tell me the same thing I am sure you are hearing across the Nation: energy costs are killing them. In the 2005 Energy bill, I inserted language into the Energy bill that directs the Small Business Administration to work with you and the MEP program to improve energy efficiency for small businesses, including manufacturers.

Can you update me on what is going on with this program?

Answer. Building upon existing relationships and contacts with other Federal agencies, NIST MEP has offered the assistance of the national network to educate manufacturers and better implement energy management approaches as described in the Energy Policy Act of 2005.

NIST MEP has coordinated with the Small Business Administration (SBA) Small Business Development Center, the Department of Energy (DOE) Industrial Technologies Program and the Environmental Protection Agency (EPA) Partnership Programs on the HVAC Maintenance Consumer Education Program.

NIST MEP is also developing a comprehensive energy awareness and implementation program with manufacturers that will result in increased energy efficiency, reduced business and operations costs, waste reduction, and new technology adoption.

MEP has also teamed with the EPA through the Green Supplier Network—a collaborative venture among industry, the EPA, and MEP—to help suppliers learn ways to save money, optimize resource use, and eliminate waste through on-site technical reviews. This will help reduce the negative impact that manufacturing suppliers have on the environment.

DOE's Industrial Assessment Centers (IAC) are sharing their energy assessment expertise and tools with MEP, which in turn help small manufacturers on the HVAC Maintenance Consumer Education Program and other similar energy conservation related efforts.

MEP and SBA have developed a joint-teaming delivery system that provides small businesses with access to Lean implementation tools to improve business operations and reduce operating costs contributing to energy conservation.

In a broader context, MEP has taken the lead in organizing the Interagency Network of Enterprise Assistance Providers (INEAP)—a network of Federal government agencies and programs including EPA, SBA and DOE's IACs—that addresses issues that facilitate the success of small businesses and smaller manufacturers.

QUESTIONS SUBMITTED BY SENATOR JACK REED

SURVEY OF INCOME AND PROGRAM PARTICIPATION

Question. The President's budget for last year proposed eliminating the Survey of Income and Program Participation (the SIPP) but according to many experts it failed to provide an adequate plan for maintaining the kind of longitudinal data that CBO and others have used to analyze income volatility. What is being done to make sure that we continue to collect data that allows us to examine the impact of a wide variety of government programs over time?

Answer. Census is continuously consulting with major SIPP stakeholders to assure that the new Dynamics of Well-being System (DEWS) will continue to supply the data needed to meet the goals of the current SIPP as well as the goals of monitoring a changing economy. The overall goal of the DEWS is to reengineer the current SIPP to construct a streamlined system that can provide similar information at a reduced cost, with improved data quality, improved timeliness, and improved data accessibility. While the lag between data collection and release decreases over time within a SIPP Panel, at the beginning of a panel the lag between data collection and release can be as long as three years. By contrast, we anticipate being able to release data from DEWS within one year of their collection.

The system will be able to generate data that can be used, in part, as SIPP data have been used, to provide accurate and comprehensive information about the income and program participation of individuals and households in the United States. The DEWS will provide a nationally representative sample that can be used to evaluate the annual and sub-annual dynamics of income, the movements into and out of government transfer programs, the effect on family and social context of individuals and households, and the interaction among these items. The longitudinal nature of SIPP will be retained in DEWS as a critical aspect of its value to many major stakeholders. The three year panel length planned for the first Panel of DEWS is the minimum length of time major stakeholders, including CBO, felt necessary for their longitudinal analysis.

Question. Is there sufficient funding in the budget to prevent a "data gap" between ending the SIPP and the new Dynamics of Economic Well-being System (DEWS)? Will we be able to compare data historically between the two surveys?

Answer. The Budget provides $15.9 million (an increase of $6.7 million over the 2007 Budget) to continue the development of the new Dynamics of Economic Well-being System (DEWS). However, to ensure Census can focus its efforts and be successful at fielding the new survey in 2009, the Budget does not include funding to continue SIPP data collection in 2008. Therefore, there will be a short "data gap" between ending the SIPP and beginning of DEWS.

Data collection will end for SIPP in September 2007. We will have full data through May, partial data through August, and no data from September through December 2007. The first DEWS data collection will provide data for calendar year 2008. It should be noted that there have been gaps in the SIPP series before. For example to enable the Census Bureau to initiate a new panel in February 2001 and process data more recently collected, data collected from February to September 2000 were never released and data from October 2000 to January 2001 were never collected. Based on those experiences and consultations with our Federal agency partners, we believe that a similar data gap between SIPP and DEWS will not hamper program evaluation or modeling. Unless the two surveys are conducted for the same time period, a complete evaluation of the impact of any differences in the two surveys on the same estimates will not be possible.

Question. Has Census done any kind of systematic analysis of whether we are producing and maintaining the data we need to understand the important changes that have been taking place in the economy so that we can adequately answer the kinds of questions that keep coming up about the extent of income volatility or the impact of outsourcing or globalization on the quality of jobs?

Answer. Census is continuously consulting with major SIPP stakeholders to assure that the new Dynamics of Well-being System (DEWS) will continue to supply the data needed to meet the goals of the current SIPP as well as the goals of monitoring a changing economy. The DEWS will provide a nationally representative sample that can be used to evaluate the annual and sub-annual dynamics of income, the movements into and out of government transfer programs, the effect on family and social context of individuals and households, and the interaction among these items. Labor force participation is integral to measuring these concepts, and in evaluating and modeling the effects of programs on these estimates. DEWS will continue to provide the same general labor force information historically provided by SIPP. As far as we know, however, SIPP has never been used to specifically evaluate the impact of outsourcing or globalization on the quality of jobs.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

ITA TRADE ACT 2002

Question. The Trade Act of 2002 requires that the Bush Administration reserve the U.S. trade laws. I understand that, in prior appearances before the Congress, namely before the Senate Finance Committee, you advised Senator Rockefeller that you would "vigorously defend and enforce our existing trade remedy laws, and implement those laws as intended to stop dumped or subsidized goods from injuring U.S. industries."

While the United States has made some submissions in the Rules negotiations in the past two years, with the exception of papers on causation, expanding prohibited subsidies, and the proposal on perishable and seasonal agricultural products, most proposals either simply seek to codify existing U.S. practice, or improve transparency and processes abroad.

Consequently, would you please identify for the Committee (1) each WTO dispute over the past five years in which U.S. trade remedy laws have been challenged and in which the WTO has issued a determination adverse to the United States; and (2) what specific proposals to correct those erroneous determinations have been submitted by the United States in the Rules negotiations in either 2005 or 2006. If no specific proposals have been submitted by the United States in the last two years, please identify when such proposals will be submitted, consistent with the Congressional mandate contained in the Trade Act of 2002.

Answer. There have been numerous WTO disputes over the last 5 years in which the U.S. trade remedy decisions have been challenged. In response, we have pursued an aggressive strategy in the WTO Rules Negotiations of defending our trade remedy regime, targeting the unfair trade practices of others, and improving transparency and due process in trade remedy proceedings so that U.S. producers and

exporters are fairly treated. We continue to follow the basic principles that we laid out early in the Rules negotiations, namely to seek to: (1) maintain the strength and effectiveness of the trade laws; (2) enhance transparency and due process requirements; (3) enhance disciplines on trade distorting practices that lead to unfair trade; and (4) ensure that dispute settlement panels and the Appellate Body do not impose obligations that are not clearly contained in the Agreements.

As of July 2006, when the formal negotiations were suspended, the U.S. negotiating team advanced proposals to address many of the Rules issues that are negotiating "priorities" for our domestic industry and Congress. These include such areas as facts available, causation, and the all-others rate, where we are seeking to correct the substantive results of certain disputes that we think were incorrectly decided by WTO panels. Some of the other proposals advanced include circumvention, new shippers, and perishable seasonal agriculture, all of which are priorities identified by the domestic industry and Congress.

This Administration is committed to strong enforcement of our trade laws, and fulfilling our TPA obligations. The Administration will continue to consult closely with the Congress as the negotiations proceed.

CONTINUED DUMPING SUBSIDY OFFSET ACT OF 2000

Question. The Administration previously recognized that the WTO decision on the Continued Dumping and Subsidy Offset Act of 2000 or "CDSOA," also known as the Byrd Amendment trade law, incorrectly imposed obligations on the United States by prohibiting the distribution of monies collected as antidumping and countervailing duties on unfairly traded U.S. imports. Congress repeatedly called for negotiations in the Doha Round to address this issue, not only in letters sent to the Administration, but also in legislation signed into law. Further, report language accompanying a series of Consolidated Appropriations Acts directed the Administration to report to the Appropriations Committee every 60 days on the status of those negotiations. I understand that Commerce Department officials have a very important role in such negotiations, as do USTR negotiators. By law, the Administration has been directed to negotiate a solution to this trade dispute.

In April 2004, the United States did submit a proposal in the Rules negotiations to recognize "the right of Members to distribute monies collected from antidumping and countervailing duties." And, while undergoing your confirmation process, you explained that the Department of Commerce and the Office of the U.S. Trade Representative were consulting to ensure proper implementation of the requirements of U.S. law regarding negotiations over CDSOA distributions. You indicated that the agencies would complete those consultations as soon as possible. You also agreed to continue to work to advance congressional objectives in the Doha Round negotiations, including reversal of not only the adverse CDSOA decision, but also other WTO decisions where WTO Panelists and the Appellate Body have overreached and created obligations never agreed to by U.S. negotiators.

Since committing to "pursue changes to those Agreements that will reverse specific adverse findings, including those regarding the Continued Dumping and Subsidy Offset Act," the United States has not submitted any further proposals recognizing the right of WTO Members to distribute monies collected from antidumping and countervailing duties.

Can you please explain how the Administration intends to obtain an acceptable and expeditious solution to the CDSOA and other WTO disputes, where the WTO has inappropriately breached its authority in decisions adversely affecting the trade laws of the United States?

Answer. We have been concerned with the possibility of the WTO dispute settlement system, in your words, "inappropriately breach[ing] its authority." The USTR has noted our disagreement with certain dispute settlement reports and the reasons for those disagreements in appropriate circumstances. In addition, Commerce has raised WTO panel decisions on such topics as zeroing in the ongoing Rules negotiations. As you know, Congress repealed the CDSOA to comply with the adverse WTO ruling. We evaluate each decision on its own and work in conjunction with Congress to find an appropriate response. Where we believe revision of the agreement is necessary, we work with other members of the WTO toward accomplishing those changes.

WTO DISPUTES

Question. From 1995 to 2006, over 40 percent of all decisions adopted by the WTO Dispute Settlement Body addressed trade remedy disputes involving the WTO Antidumping (AD), Subsidies and Countervailing Measures (SCM) and Safeguards Agreements. And, I understand that, in 2005 and 2006, an even higher percentage—

over 60 percent—of WTO disputes initiated were trade remedy disputes. The United States, which actively helped shape the trade remedy rules and has a highly transparent system providing significant due process of law, is the primary target of those WTO trade remedy disputes. In fact, I have been advised that the United States has been the defending party in roughly 60 percent of the trade remedy decisions adopted by the WTO Dispute Settlement Body from 1995 to 2006. More specifically, the United States was the defending party in almost 50 percent of requests for consultations filed since 1995 concerning the WTO Antidumping Agreement in particular. Yet, the United States imposed only 12.6 percent of all antidumping measures imposed by all WTO Members from 1995 to June 2006. In the trade remedy area, the WTO has, often wrongly, found one or more violations by the United States in nearly 90 percent of disputes, imposing on the United States obligations that our Nation never agreed to in trade talks. In fact, the United States actively opposed "zeroing" during negotiations. Thus, it is clear that the WTO dispute settlement system is being used unfairly, threatening U.S. sovereignty and eroding the effectiveness of our country's trade remedy laws. Despite this, the United States has submitted only a handful of publicly available proposals in the Rules negotiations suggesting textual modifications to correct instances of "overreaching" by the Appellate Body.

When and how do you intend to collaborate with USTR to correct this continuing imbalance? What is your strategy to rapidly generate textual proposals that will better protect existing U.S. trade laws?

Answer. We are fully aware of the frequency in which the United States has had to defend its trade remedy laws before the WTO Dispute Settlement Body and have collaborated with USTR to address this issue since the inception of the Doha Round. In the context of the Dispute Settlement Understanding negotiations, we have raised proposals addressing the problem of the Appellate Body creating rights and obligations that are not contained in the underlying agreements. Additionally, in the Rules negotiations, the United States continues to emphasize the importance of clearly written rules so that the dispute settlement process will involve less interpretation to the extent that the intent of the Members is clearer. As the negotiations progress, in close coordination with USTR, we plan to intensify our efforts to advance the proposals already tabled that will protect U.S. trade laws and direct the WTO Dispute Settlement Body toward a balanced decision making process.

DOHA DISPUTE SETTLEMENT NEGOTIATIONS

Question. Specifically concerning the issue of the Doha Dispute Settlement negotiations, during your confirmation process, you offered a general strategy of: (1) increasing Member nations' control over the dispute settlement process; (2) increasing transparency; (3) pursuing changes to the Rules Agreements to ensure that panels and the Appellate Body adhere to the appropriate standards of review; and (4) pursuing changes to the Rules Agreements that "will reverse specific adverse findings, including those regarding the Continued Dumping and Subsidy Offset Act, 'zeroing,' and injury determinations."

Can you please provide the status of U.S. efforts to advance negotiations concerning items (1), (2), and (3), above, and advise the Committee when specific proposals will be submitted by the United States addressing the fourth item, namely reversing the WTO's findings with respect to CDSOA, zeroing, and injury determinations?

Answer. In the context of the Dispute Settlement Body negotiations, USTR, collaborating with Commerce, has introduced two sets of proposals—including proposed text. The first set of proposals would expand transparency and public access to dispute settlement proceedings by opening panel hearings to the public, requiring public versions of written submissions, providing for early public release of panel reports, and setting guidelines for amicus curiae submissions. The second set of proposals, submitted jointly with Chile, contains provisions aimed at giving parties to a dispute more control over the process and greater flexibility to settle disputes. These proposals address such concepts, among others, as ensuring that panel members have appropriate expertise to appreciate the issues presented in a dispute and providing additional guidance to WTO adjudicative bodies concerning the nature and scope of the issues and rules of interpretation of the WTO agreements. These proposals are still on the table, and as the negotiations progress, we will intensify our collaboration with USTR to advance the key concepts encompassed by the proposals.

We agree that the Appellate Body's findings raise concerns; however, we also place significant importance on respecting the dispute settlement system and addressing the findings, whether we agree with them or not, through the appropriate

mechanisms. First, we are developing our thoughts and options with respect to implementation and are committed to consulting closely with Congress as to the appropriate way to move forward in response to the Japan zeroing report. Second, we will continue to use the Rules negotiations as a forum to educate other Members on the troubling implications of the Appellate Body reports, particularly with respect to their own antidumping systems. We firmly believe that the zeroing issue is one that must be addressed through negotiation and we are in close consultation with USTR regarding how to move forward.

Likewise, injury is part of our affirmative agenda in the Rules negotiations, and we have submitted proposals to address specifically the problem created by the WTO decision related to this issue. As the Negotiations progress, we will continue to advance these proposals and address our injury concerns as an integral part of the U.S. negotiating strategy.

Regarding CDSOA, we have been concerned with the possibility of the WTO dispute settlement system, in your words, "inappropriately breach[ing] its authority." The USTR has noted our disagreement with certain dispute settlement reports and the reasons for those disagreements in appropriate circumstances. However, in light of the importance we attach to respecting the dispute settlement system, noted above, and the potential consequences of a failure to abide by Appellate Body decisions, we evaluate each decision on its own and work in conjunction with Congress to find an appropriate response. Where we believe revision of the agreement is necessary, we work with other members of the WTO toward accomplishing those changes.

WTO APPELLATE BODY

Question. As described in prior questions, it is unfortunate that the WTO Appellate Body for several years now has been engaged in improperly expanding its mandate by making a series of decisions that undermine our Nation's trade remedy laws. One of the most egregious of these decisions has been issued against the U.S. antidumping duty practice called "zeroing.

On one level, the Bush Administration should be commended for combating these zeroing decisions, which would force the United States to collect less than 100 percent of dumping duties owed. For example, in recent statements before the WTO Dispute Settlement Body, the Administration has called Appellate Body reports against zeroing "deeply flawed," and "devoid of legal merit."

Yet, on February 22, 2007, the Commerce Department nonetheless implemented the findings of the Appellate Body with respect to "zeroing" in investigations, and, two days earlier, the Administration told the WTO that it would comply with its WTO obligations with respect to "zeroing" in other phases of antidumping proceedings.

Why would the United States implement Appellate Body reports that it admits are "deeply flawed" and "devoid of legal merit"? Couldn't the United States simply refuse to implement these "deeply flawed" WTO decisions and, instead, seek a negotiated solution through the WTO Doha Round negotiations? This would be consistent with our Nation's statements on the Appellate Body's report before the Dispute Settlement Body (DSB), which consisted of the following:

"Were this a municipal court result, such an illogical outcome would be a prime candidate for reconsideration by the legislative branch. That is no less the case here, and the United States submits that Members take up this issue, which affects the antidumping systems of a number of Members, in the Rules negotiations."

When will the United States submit a proposal in the Rules negotiations addressing this issue?

Answer. We agree that the Appellate Body's recent findings on zeroing in reviews are very troubling, however, we also place significant importance on respecting the dispute settlement system and addressing the findings, whether we agree with them or not, through the appropriate mechanisms. To that end, we are thinking about this issue along two tracks. First, we are developing our thoughts and options with respect to implementation and are committed to consulting closely with Congress as to the appropriate way to move forward in response to the Japan zeroing report. Second, we will continue to use the Rules negotiations as a forum to educate other Members on the troubling implications of the Appellate Body reports, particularly with respect to their own antidumping systems. We firmly believe that this zeroing issue is one that must be addressed through negotiation and we are in close consultation with USTR regarding how to move forward.

CAFTA—SOCK TRADE

Question. In July 2005, during the CAFTA debate before the U.S. House of Representatives, you and U.S. Trade Representative Portman wrote a letter in which you advised that the United States would initiate a special CAFTA textile safeguard re-imposing U.S. tariffs on imported socks for three years, if imports "cause or threaten to cause serious damage to the domestic industry." You stated that you wished to be "pro-active in initiating a sock safeguard if the situation were to warrant it."

I have been apprised that, since CAFTA came into effect 11 months ago, sock imports from Honduras have increased by roughly 40 percent. Domestic production is falling, and over 20 U.S. sock mills have closed. Because it appears that the situation today may warrant the initiation of a safeguard on imported socks, is the Administration prepared to seek such a safeguard? Does the Administration intend to honor its prior commitment to the Congress in this regard, even as it seeks additional free trade agreements? Is there some reason that CAFTA's negotiators failed to anticipate and address the possibility of such an un-level playing field in trade in socks?

Answer. As you noted, on July 27, 2005, USTR Rob Portman and I promised Congressman Aderholt that the Administration would (1) include socks in any textile agreement with China, (2) ensure that, if the existing China sock safeguard was renewed, it would be in place for the maximum possible time period at the minimum possible safeguard level, (3) seek to amend CAFTA–DR to alter the rules of origin or to lengthen the tariff phase-out for socks, and (4) to proactively utilize the CAFTA–DR textile safeguard for socks, if warranted. The Administration subsequently, as promised, included socks in the China textile agreement, concluded a special China sock quota agreement while the China textile talks were ongoing, and has pursued a sock amendment to the CAFTA–DR. We also are carefully monitoring CAFTA–DR sock import data and, as promised, will proactively utilize the CAFTA–DR safeguard, if warranted by the facts. To assess whether safeguard action may be warranted, the Department of Commerce carefully monitors imports of socks from CAFTA–DR signatories and other relevant data, including domestic production data, to assess whether imports of socks from these countries are causing, or threatening to cause, serious damage to the domestic industry as a result of the elimination of duties under the Agreement, which went into effect for Honduras on April 1, 2006. Notably, imports of socks from Honduras fell in each of the last three months of 2006 to levels lower than before CAFTA went into effect. Nevertheless, we are closely tracking the data and will act should data warrant a safeguard, but it is worth noting that domestic production was down by only 1.1 percent in 2006 from 2005 levels.

QUESTION SUBMITTED BY SENATOR RICHARD C. SHELBY

BEA'S R&D BUDGET INITIATIVE

Question. The BEA has a proposal for $2.1 million to measure the impact of research and development on the economy. Can you tell us more about this initiative and how it will impact future GDP calculations?

Answer. While most economists believe that R&D and other investments in intangibles are among the most important sources of growth in GDP and productivity—with some estimates ranging as high as 40 percent of growth—there are no hard official estimates on their impact. This project will provide the Nation with a much clearer picture of the impact of investments in R&D and other intangibles on trend growth in GDP and productivity, as well as their impact over the course of the business cycle. The BEA project will provide aggregate data, as well as data on the effects across industries, across regions of the country, and its impact on our international trade and balance of payments. These data will prove useful in a broad variety of contexts ranging from monetary policy and budget projections to tax policy and the funding of investments in R&D.

BEA is in the early stages of developing estimates for R&D as investment, and these estimates will not be fully incorporated into the National Income and Product Accounts until 2013. However, this preparatory work, in the form of satellite accounts, can provide valuable information on the effect of investment in R&D on U.S. economic growth. The preliminary R&D satellite accounts released in September 2006 showed R&D investment accounted for 6.5 percent of growth in real GDP between 1995 and 2002 and 4.5 percent of growth between 1959 and 2002. In comparison, businesses' investment in commercial and all other types of buildings accounted for just over 2 percent of real GDP growth between 1959 and 2002.

NOAA JOCI AND THE OCEAN POLICY SCORECARD

Question. Although NOAA's 2008 budget request boasts a $123 million increase for ocean-related activities, it represents a fraction of the true budgetary needs for the marine community. For the past few years, the Joint Ocean Commission, which formed the inception of the President's U.S. Ocean Action Plan, has clearly and objectively laid out the budgetary requirements to better support ocean-related science research and education. I am extremely concerned that Congress continually receives a budget request from the Administration that downplays these critical activities. I wonder at what level your department endorses marine science, because frankly, Mr. Secretary, the Senate is weary of being the only federal entity that champions this funding disparity.

Are you familiar with the Joint Ocean Commission Initiative, and the contents of its recent publications, namely the U.S. Ocean Policy Report Card for 2006? And are you aware that the category for "New funding for ocean policy and programs" received the grade of "F"? What are your thoughts on this grade?

Answer. Yes, I am familiar with both the Joint Ocean Commission Initiative and the recent Ocean Policy Score Card. We are pleased to note that we have had grade improvements for 2006 in five out of the six subject areas. We were also pleased with the overall scores for Ocean Governance and Fisheries Management Reform. With respect to the grade for "new funding for ocean policy and programs," the scorecard was issued prior to the release of the fiscal year 2008 President's Budget. The fiscal year 2008 Budget includes significant new increases in support of implementing the Ocean Action Plan, addressing many of the concerns noted by the Report Card.

NTIA PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS GRANT PROGRAM

Question. Mr. Secretary, your department has entered into a memorandum of understanding with the Department of Homeland Security to assist in the development of policies, procedures and regulations governing the Public Safety Interoperable Communications (PSIC) grant program.

What role will your department play in developing the grant guidance package and eligibility requirements for this $1 billion program?

Answer. The Department of Commerce's National Telecommunications and Information Administration (NTIA) is working very closely with the Department of Homeland Security (DHS) in the development of grant guidance and requirements for the program. Consistent with the requirements of the Deficit Reduction Act of 2005 and the Call Home Act of 2006, NTIA retains final approval authority for policies, procedures and regulations that govern the PSIC Grant Program.

Question. The Department of Homeland Security has been grappling with the issue of interoperable communications for years. I sit on the appropriations subcommittee for that department as well. These funds are intended to focus on the purchase of equipment to address interoperability.

Mr. Secretary, tell me how your involvement will ensure this funding will be put to the best use by the localities in Alabama and throughout the United States to achieve true interoperability across county and state lines?

Answer. NTIA intends to use its expertise to explore and encourage all technology solutions that are available to first responders to advance overall interoperability. With the Statewide Interoperability Communications Plans and the PSIC investment justifications, NTIA and DHS will be able to approve projects that clearly identify interoperability gaps and provide the greatest benefit toward improved interoperability.

Question. Will Commerce work to ensure that the choice for a workable solution to interoperability will rest in the hands of locals and will not be dictated from the federal level?

Answer. NTIA understands that interoperability is a complex issue and no one federal solution exists. Local governments have collectively spent billions of dollars on communication infrastructure. The program guidance and application process for the PSIC Grant Program will be designed to leverage existing investments to build and sustain intrastate and interstate regional capabilities and identified needs. NTIA is working with DHS to develop the grant guidance that ensures that funding will be passed through to eligible public safety agencies.

2010 CENSUS—COST EFFECTIVENESS

Question. The President's budget request includes increased funding for the Census Bureau in anticipation of conducting the decennial census. These increases are quite significant and will continue to grow over the next several years. While this

effort is constitutionally mandated, there are also other activities that the Census is involved in, including surveys of state and local governments, as well as economic indicators.

Mr. Secretary, what efforts are being made to ensure that the 2010 Census is as cost effective and accurate as possible while maintaining the other capabilities the Bureau provides?

Answer. All the factors that have led to higher costs for each decennial census since 1970 will continue—besides inflation and increased workload, these include the increased difficulty of ensuring coverage accuracy (both overall and for each population group and jurisdiction); increased public resistance to answering surveys; and increased diversity that make it more difficult to reach everyone. No matter what design is chosen, the 2010 Census will be costly.

For the 2010 Decennial Program, compared to the cost of the previous census (2000), the percentage increase in estimated life cycle costs will be the lowest in the last four decades. This pattern also holds when comparing unit costs. Thus, while achieving the significant benefits to our Nation from the annual release of long-form data by the new American Community Survey, and improvements to our MAF/TIGER (geographic) databases, the Reengineered 2010 Census of Population and Housing also will be significantly less costly than historical trends would project.

—Cost containment is one of the four key goals for the reengineered 2010 Decennial Census program. When this effort was launched in 2001, we estimated it would save over $400 million compared to repeating the Census 2000 approach. And, we now estimate that reverting in fiscal year 2008 to the Census 2000 approach would cost over $1 billion more than continuing with our reengineered approach.

—Significant savings and accuracy improvements will result from:

  —Not having to collect long-form data in the 2010 Census (because it now is being collected by the American Community Survey),

  —Restructuring our field data collection process to use GPS-equipped Handheld Computers (that will benefit from the improvements to our MAF/TIGER databases), and

  —Reducing non-response follow-up workloads by sending a targeted second mailing of questionnaires to households who do not respond to initial mailout, and being able to electronically remove late mail returns from the nonresponse follow-up assignments on the Handheld Computers.

SECURITY OF PERSONALLY IDENTIFIABLE INFORMATION ON LAPTOPS AND OTHER PORTABLE DEVICES

Question. Last year the Department of Commerce reported the loss of hundreds of laptop computers, thumb drives and data disks used in collecting data for many of its surveys, including data associated with the American Community Survey. The Census Bureau is now acquiring hundreds of handheld devices to be used by temporary employees as part of the 2010 Census.

Do all portable devices in the Bureau containing sensitive personal information have the necessary encryption to protect the data if the computer or handheld is lost or stolen?

Answer. Yes. All data files on the laptops currently being used for data collection in census survey and census operations are encrypted (FIPS 140–2 compliant). Full disk encryption for the laptops is under development and will be implemented later this year. For the 2010 Census, we plan to use handheld computers for collection of Title 13 data for three major operations (Address Canvassing, Non-response Follow-up and Coverage Measurement Person Interviews), with all others still being done on paper. All sensitive data collected during the 2008 Dress Rehearsal and 2010 Census using the handheld computers will be stored on removable secure digital (SD) cards using FIPS 140–2 compliant encryption software.

Question. How can we ensure we protect the privacy of our citizens if handhelds are lost?

Answer. In addition to the file encryption described above, census enumerators will access their handheld computers through biometric technology (fingerprint reader) as well as a response to a question for which only they would know the answer. All sensitive data are encrypted while stored on the enumerator's handheld computer's secure digital (SD) card, as well as during transmission over a secure private network to the secure data center. Upon successful transmission, all sensitive data on the enumerator's Handheld Computer that are no longer required to conduct the census operation will be automatically deleted.

Question. What procedures have been instituted to track devices that contain sensitive personal information within the Bureau?

Answer. All laptops that currently contain sensitive personal information are managed through the Census Bureau's automated property management system (APMS). The APMS assigns a unique identifier to each device and associates it with the individual that is using it. In addition, we are implementing new procedures that will require our census field representatives to enter their laptops' unique identifiers into an automated questionnaire. This information will be automatically retrieved by our control systems and matched against the information in the APMS to ensure that all devices are accounted for on a regular basis. This procedure should be in place later this Spring.

With respect to the hand-held computes (HHCs), Secure Digital (SD) Cards (SD), laptop computers, and air cards used in the 2008 Dress Rehearsal (DR) and 2010 Census, we track who possesses them via a paper and an automated tracking system. We track all hand-offs of equipment via a paper process. All staff that deliver or are assigned equipment sign a paper form acknowledging receipt of that equipment. We also key the data from the paper forms into Harris' asset management system. Every time a piece of equipment is replaced, the user signs a paper form to return the defective device. Staff also sign another paper form to acknowledge receipt of the replacement device. All paper forms are stored in computer control files in the Local Census Offices.

Harris provided laptops are used by Field Operations Supervisors. These laptops are not used for data collection, but do have PII on them, such as payroll data and staff rosters. These laptops will have full disk encryption. They will require a user ID and password for access during 2008 DR Address Canvassing. We plan to add biometric technology (fingerprint reader) in time for DR Non-Response Follow-Up.

Question. Once the sensitive data is collected on the laptop or handheld computer and transmitted to the Census Bureau, how do you ensure that the data is scrubbed from these computers?

Answer. For the laptops currently being used by census field representatives, the Regional Office survey manager initiates a process to delete data from the laptops based on the interview period. This process does not require the census field representative to execute a routine; it happens automatically as part of the transmission processing. A date is stored in the survey control database indicating when this deletion routine was initiated, which allows us to ensure that it is happening on a regular basis.

With respect to the hand held computers that will be used in the 2008 Census Dress Rehearsal and the 2010 Census, upon successful transmission, all sensitive data that are no longer required to conduct the census operation will be automatically deleted. In addition, we plan to destroy the SD cards following the completion of each operation to further ensure data protection. Procedures will be fully developed and tested prior to use in the field.

REAUTHORIZATION OF THE NOAA CORPS

Question. The Committee understands that the size of NOAA's fleet is expanding, yet the NOAA Corps authorization, which regulates the size of the NOAA Commissioned Officer Corps, expired in 2005. The Committee supports NOAA Corps officers and the valuable expertise they lend to NOAA's field operations and homeland security activities.

When can Congress expect to receive the legislative package reauthorizing the NOAA Corps, and may I receive a copy personally?

Answer. We are interested in reauthorizing the NOAA Corps and we look forward to working with the Committee on this important legislation. We will ensure that you receive a personal copy of any legislation the Administration submits to reauthorize the NOAA Corps when it is delivered.

FEDERAL CONSISTENCY STANDARDS AND THE CZMA FOR FLORIDA AND ALABAMA

Question. Recently, an issue has come up during my meetings with constituents involving interstate coastal zone management activities, namely between Florida and Alabama. I am concerned about the potential situation arising where one state can influence, or even impede, another state's development projects. I am watching this situation closely as it unfolds, especially with how it may impact Alabama's businesses and economic development.

What level of assurances can I receive from you that my office will be informed of any interstate coastal zone management issues affecting Alabama?

Answer. We understand that this is an issue of high priority and importance for Alabama. You have my full assurance that NOAA will continue to keep you informed as this process unfolds. At this time, there has not been a formal submission by Florida of a request for approval to review activities in other states, but, as you

know, Florida has initiated the state and federal agency consultation process to list activities for interstate consistency review. On March 7, NOAA staff with the Office of Ocean and Coastal Resource Management facilitated a meeting between the coastal program managers for the States of Florida, Alabama and Georgia to develop a better understanding of Florida' intentions, the concerns of neighboring States, and the expectations that NOAA will place on Florida in justifying their request for NOAA's approval. In addition to ensuring that any change to the Florida Coastal Management program is fully consistent with the requirements of the Coastal Zone Management Act and NOAA's Interstate Consistency regulations, NOAA will be fully engaged in a dialog with all of the states and affected federal agencies in addressing whatever concerns may arise from Florida's proposed extension of its review authority.

FUNDING LEVELS FOR SEVERE WEATHER FORECASTING

Question. Severe weather always threatens the Gulf Coast. Although last year's hurricane season was relatively light, I still encourage my constituents to remain vigilant as flooding, tornadoes and severe thunderstorms are a constant danger.

Are we providing sufficient resources to meet the challenges of predicting and protecting our citizens from severe weather events?

Answer. NOAA's fiscal year 2008 President's budget request fully supports its forecast and warning operations. Specifically, NOAA's fiscal year 2008 budget requests additional funding to improve its hurricane forecasting program: $3 million for hurricane data buoy O&M, $1 million for Hurricane Weather-Research Forecast (HWRF) model O&M and $2 million to accelerate research to improve hurricane intensity forecasts. NOAA is committed to improving operational effectiveness and services, particularly for high-impact weather events, by taking full advantage of emerging science and technological improvements. We are committed to evolving services to best meet the changing and growing need for environmental forecasts and services. NOAA's fiscal year 2008 budget request supports efforts to upgrade the NEXRAD Radar network by implementing dual polarimetric radar. It also supports other efforts including: improved numerical modeling, data assimilation, education and outreach, training, forecaster workstation (AWIPS) upgrades, as well as efforts for future technological advances, such as phased array radar (PAR). We believe the President's fiscal year 2008 budget request positions us to make those technical and service improvements.

PATENT ALLOWANCE VERSUS PATENT REJECTION

Question. I'm aware that you set production goals for PTO examiners. Those production goals should of course promote quality examination. The last thing we want is for production goals to be based solely on patent allowance so that examiner's are motivated to allow a patent even if the application doesn't warrant such allowance, resulting in poorer quality patents.

Do you consider patent allowance versus patent rejection when setting production goals?

Answer. Examiner production goals are set so that an examiner receives the same amount of credit for an application that is allowed or becomes abandoned.

Question. The Bureau of the Census has initiated a large IT program to automate the process of conducting the 2010 Decennial Census, such as using wireless GPS-enabled handheld computers to directly capture information collected during interviews. This process is expected to reduce the need for paper-based processing while increasing operational efficiency, improving accuracy and reducing costs.

Mr. Secretary, former Census Director Kincannon testified before Congress last year that capital investment in an automated system to replace the traditional paper count will save taxpayers approximately $1 billion to conduct the 2010 Census. Is that estimate still accurate?

Answer. Yes—we still estimate that reverting to paper-based operations would add more than $1 billion to the total cost of the program. Thanks in large part to the support of Congress in the continuing resolution for fiscal year 2007, we have been able to continue our efforts for the automation components of the reengineered census.

Last summer, when those funds were in jeopardy, the Census Bureau was forced to consider reverting back to paper-based operations that would have added over $1 billion to the overall cost of the 2010 Census. That estimate is based on the savings we expect to achieve through the use of handheld computers and other aspects of our reengineering efforts. If we have to revert to a paper-based census:

—The Census Bureau would have to expand space and office staff in over 450 temporary Local Census Offices by 50 percent to conduct 2010 Census oper-

ations. The additional space and office staff would be needed to store, track, and process the additional paper forms that will be needed if we do not use handheld computers for data collection.

—Non-response follow-up and other field operations would be less efficient, requiring significantly more field enumerators.

—We would have to spend significantly more money visiting households that have already responded to the Census. This is because, without the handheld computers, we would have no ability to remove late mail returns (those households that return their census forms after the date we begin preparing non-response follow-up assignments) from the assignment lists on those devices.

—Other cost increases would be inevitable, including increased cost for paper and other supplies, mileage, and salaries to conduct a census without automation.

These additional costs would be offset only partially by reductions in automation costs that would not be incurred (under a paper-based census) related to the handheld computer equipment.

2010 CENSUS—HANDHELD COMPUTERS

Question. What is the status of the development of the handheld computer that is critical to the success of this program?

Answer. Thanks in large part to the support of Congress in the continuing resolution for fiscal year 2007, we have been able to continue our efforts for the automation components of the reengineered census. For the 2008 Dress Rehearsal and the 2010 Decennial Census, the Census Bureau plans to use handheld computers and supporting services to directly capture information collected during personal interviews and eliminate the need for paper maps and address lists for the two largest field data collection operations (Address Canvassing and Non-response Follow-up) and for the Census Coverage Measurement Personal Interview process. The development of handheld computers for these operations in the Dress Rehearsal is on-track.

DVD PIRACY IN MEXICO

Question. The Department of Commerce is part of the Administration's effort to combat global piracy. I understand U.S. businesses are concerned about DVD piracy in Mexico.

Can you comment on the implications of the recent DVD and CD raid in Mexico City and what this might mean for United States-Mexican cooperation to combat piracy?

What is Commerce's role on this issue?

Answer. The Department of Commerce is encouraged by the Mexican Government's efforts to combat piracy and counterfeiting over the past year. Recent raids by Mexican enforcement officials during February and March reflect the new Calderon Administration's commitment to the rule of law and economic competitiveness. However, greater enforcement efforts and stronger prosecution are still needed in Mexico. According to the 2007 Special 301 Submission by the International Intellectual Property Alliance, trade losses due to copyright piracy in Mexico are estimated to have exceeded $1 billion in 2006. Accordingly, Commerce continues to monitor Mexico's progress on intellectual property rights (IPR) issues through the combined efforts of an interagency IPR team. Additionally, Commerce and the U.S. Trade Representative (USTR) are working with the Governments of Mexico and Canada on the Security and Prosperity Partnership of North America Intellectual Property Action Strategy, a trilateral initiative to combat piracy and counterfeiting in North America.

Finally, the USPTO conducts several programs for government officials in order to improve the level of expertise on intellectual property enforcement in Latin America. In August of 2006 and February 2007, the USPTO invited Latin American government officials to its Global Intellectual Property Academy. The Academy provided practical intellectual property rights enforcement education and capacity-building to Latin American judges, prosecutors, customs officials, law enforcement officers and others who are involved in the civil, administrative or criminal enforcement of intellectual property rights. Mexican government officials participated in the Academy.

Also, in December of 2006, the USPTO held a Seminar for the Judiciary on Intellectual Property Enforcement. The program was attended by both Mexican and Central American judges.

ITA CAFTA NATIONS

Question. Since the enactment of CAFTA, the domestic sock industry has continued to close plants. The CAFTA nations, particularly Honduras, have increased

their production and importation of socks to the United States by significant amounts to the detriment of our domestic industries. Why has the Department of Commerce not granted their promise to extend the period for tariffs on socks produced in CAFTA nations?

Answer. As you know, on July 27, 2005, USTR Rob Portman and Secretary Gutierrez promised Congressman Aderholt that the Administration would (1) include socks in any textile agreement with China, (2) ensure that, if the existing China sock safeguard was renewed, it would be in place for the maximum possible time period at the minimum possible safeguard level, (3) seek to amend CAFTA–DR to alter the rules of origin or to lengthen the tariff phase-out for socks, and (4) to proactively utilize the CAFTA–DR textile safeguard for socks, if warranted. The Administration subsequently, as promised, included socks in the China textile agreement, concluded a special China sock quota agreement while the China textile talks were ongoing, and has pursued a sock amendment to the CAFTA–DR. We also are carefully monitoring CAFTA–DR sock import data and, as promised, will proactively utilize the CAFTA–DR safeguard, if warranted by the facts. To assess whether safeguard action may be warranted, the Department of Commerce carefully monitors imports of socks from CAFTA–DR signatories and other relevant data, including domestic production data, to assess whether imports of socks from these countries are causing, or threatening to cause, serious damage to the domestic industry as a result of the elimination of duties under the Agreement, which went into effect for Honduras on April 1, 2006. Notably, imports of socks from Honduras fell in each of the last three months of 2006 to levels lower than before CAFTA went into effect. Nevertheless, we are closely tracking the data and will act should data warrant a safeguard, but it is worth noting that domestic production was down by only 1.1 percent in 2006.

SUBCOMMITTEE RECESS

Senator MIKULSKI. We're going to stand in recess until next Thursday, March 8, continuing our innovation oversight hearings. We will be getting testimony from the National Oceanic and Atmospheric Administration, and the Director of the National Science Foundation.

This subcommittee stands in recess until March 8.

[Whereupon, at 11:50 a.m., Thursday, March 1, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, March 8.]